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THE HOUSE OF LORDS



THE
HOUSE OF LORDS

A Retrospect and a Forecast

UNIV. OF
CALIFORNIA

BY

THOMAS ALFRED SPALDING, LL.B.

"

BARRISTER-AT-LAW

*"It was our ancient privilege, My Lords,
To fling what'e'er we felt, not fearing, into words"*

ALFRED, LORD TENNYSON

London

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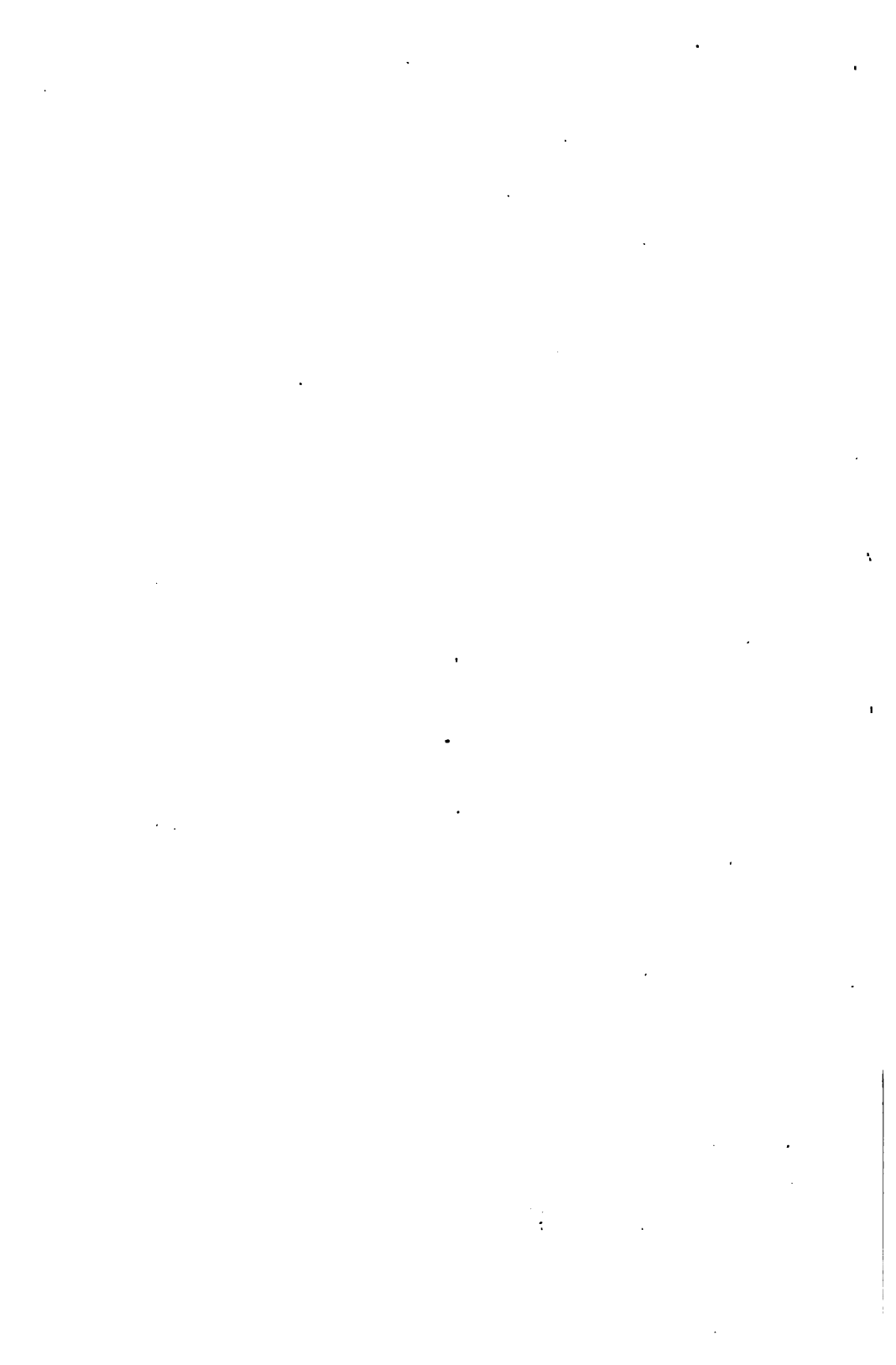
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PRELIMINARY.



THE HOUSE OF LORDS.

CHAPTER I.

UNIV. OF CALIFORNIA *INTRODUCTORY.*

IT must be evident to all who take an interest in current politics that the nation is on the eve of a struggle with the House of Lords which will equal, if it does not surpass, the severity of that which preceded the enactment of the Reform Act of 1832. When the House of Lords inaugurates the proceedings of a new Parliament by rejecting so small and so reasonable an instalment of reform as the assimilation of the law of intestate succession to real property to that relating to personal property, it is clear that the Peers are in no humour to give a fair and unbiased consideration to those weightier matters of legislation upon which the mind and will of the nation are set. Even if the far-reaching question of Home Rule were not within the range of practical politics, there are many other proposals which must arouse the opposition of the Upper House. The Parish Councils Bill strikes a blow at the authority of the landed aristocracy; the Local Option Bill affects the

interests of a body of traders whose alliance with the Conservatives is as sincere and unswerving as that of the clergy, who are in arms against the threatened disestablishment of the Church in Wales. On any one of these questions the Lords may be expected to join issue with the representatives of the nation, and then the struggle will commence.

And what will be the end of it? Will it result, as upon previous occasions, in a more or less ungracious surrender, to the will of the people, after a more or less tedious and harassing conflict; or will the outcome be a reform of the most mediæval portion of our system of government? Are the Lords to be allowed to plunge the country into one more period of confusion, agitation, and uncertainty, and to emerge from it with their powers unimpaired, or will the struggle be made an opportunity to bring the Upper House more into harmony with modern requirements? These are the thoughts which, upon the eve of this great political crisis, must forcibly present themselves to every student of our constitutional methods.

For it must be apparent to all such that, whilst the other two branches of the Legislature, the Commons and the Crown, have been gradually moulded into harmony with the altered needs of the country, the House of Lords has shown no such flexibility. In the short period of sixty years the House of Commons has been transformed from a body, half nominated by influential individuals, half returned by a varying, unrepresentative, and largely corrupt electorate, into one which mirrors, with a fair approach to accuracy, the mind of the whole nation. The Crown, on the other

hand, has allowed those constitutional rights which would have brought it into conflict with the growing power of the Commons to drop quietly into desuetude. Only once since the passing of the Reform Bill has the Crown dismissed a Ministry which possessed the confidence of the House of Commons, and replaced it with one which could only boast of the confidence of the Court. But the experiment of 1834 did not fulfil the expectations entertained with regard to it. The history of Sir Robert Peel's five months' administration, so far as it is not a history of an unsuccessful appeal to the country, is one of uninterrupted defeat; and Peel was eventually replaced by Lord Melbourne, the Minister whom the Crown had so unceremoniously dismissed. Since that time the Crown has prudently recognised what is now undoubtedly the established constitutional usage, namely, that the existence of the executive depends solely upon the will of the House of Commons. The Crown, therefore, has been able to adapt its functions to the changing needs of the nation.

This capacity for adaptation is absolutely essential under such a constitution as that of the United Kingdom, which is based very largely upon custom and usage, and upon Acts passed from time to time by Parliament, which Acts Parliament is at any moment competent to repeal. The state has no written constitution, no fundamental laws, such as are common in other countries, which the Legislature is powerless by its ordinary methods of procedure to revise, and which can only be altered by extraordinary process. And what the constitution thus loses in definiteness it gains in elasticity and adaptability. But this gain is sub-

stantial only upon condition that each branch of the Legislature proves responsive to those influences which tend to keep it in touch with progress. The House of Commons stands in no danger of falling into such stagnation. It is born of the people, and, if it grows out of harmony with them, the discord is very rapidly corrected. The Crown is easily influenced, because the House of Commons possesses an effectual check upon its action in the power, in the last resort, to refuse supplies. But the House of Lords breathes an altogether different atmosphere. The House of Commons has no direct check upon the action of the Lords. The latter can only be influenced, or, if necessary, coerced, by two methods: by popular demonstration, from the mild form of public meeting to the more dangerous menace of physical force; and by the creation of a sufficient number of new Peers to swamp the opinion of the resisting majority. Neither of these methods contributes to the smooth working of Constitutional Government. The former produces unnecessary turmoil, dislocation of business, and, in its more extreme development, destruction of property and even of life; and it results in a bitterness of passionate antagonism which is not easily allayed. The latter has a double disadvantage. It places the Liberal party, if they are driven to recommend the exercise of the Royal prerogative, in the ridiculous position of endeavouring to strengthen numerically a House whose power they desire to restrain. If the creations were made, and a Liberal majority were thus brought into existence, it would be competent, if not necessary, for a succeeding Tory Government to restore the balance; and thus the

House of Lords, already far too unwieldy, would be rapidly swollen into a huge unmanageable assembly, and its powers for evil would be a thousandfold increased. These considerations have always prevented the actual exercise in recent times of the check upon the action of the House of Lords which consists in the wholesale creation of new peerages. It has once been threatened, and threatened with success; but a check which entails so many manifest disadvantages cannot be considered more satisfactory than the cumbrous method of popular agitation. It may be said, therefore, that no such effective means of influencing and moulding the House of Lords as exist in the case of the Crown and of the Commons are known to our constitution, and the result is that the Lords remain the one stagnant and unprogressive branch of the Legislature.

It is not the purpose of this investigation to discuss at length the balance of advantages and disadvantages between the unicameral and bicameral systems of Government, although it will be incidentally shown that much may be said in favour of the former. The subject is an interesting field for academic speculation, but it will lead to no practical results. The legislatures of all civilised communities, Republican or Monarchical, prove that there is a universal consensus of opinion in favour of the existence of a second chamber of some sort, and therefore it may be safely assumed that, for the present, the question of government by a single chamber is not within the range of practical politics.

But although the prolific "Mother of Parliaments"

has invariably brought forth twins, the resemblance between the progeny and the parent stock has been repeated in one of the children only. The likeness between the various Lower Chambers and our House of Commons is fairly accurate in all cases, and this fact is proof that the House of Commons is a type which has adapted itself to the needs of modern civilisation. But no second chamber bears even a remote resemblance in its constitution to our House of Lords. In the great colonies no such chamber is found in which the hereditary element has any place. A scheme for a partially hereditary Legislative Council was indeed adopted at the end of the last century for Canada ; but it soon proved impracticable, and it had to be abandoned. The United States of America from the first rejected the hereditary element. But it must be admitted that the answer of the advocates of Hereditary Legislators to this analogy is, so far as it goes, conclusive. They say that hereditary legislatures could not have been created in the colonies and in the United States, because the necessary material, the old aristocratic families with large territorial influence, were wanting ; that a peerage is the growth of centuries, and cannot be created in a day. All this may be admitted, but yet the fact remains that if a chamber similar to our House of Lords were essential to the well-being and good government of a modern state, these communities should by this time be feeling the disadvantage of the lack of such an institution, and should be upon the high road towards creating it. The contention is that the House of Lords grew into being in answer to an imperious demand. If, therefore,

new states in the course of development, do not tend to evolve a hereditary branch of the Legislature, it is fair to assume that such a branch is not now essential to the good ordering of a nation.

But if we turn from states of modern creation to the old-established communities of Europe, we find a condition of affairs which must puzzle those who contend that lack of material for a hereditary branch of the Legislature is the only reason for the non-existence of such an institution. Most European states have been compelled, in times which are quite recent, to remodel the constitution of their legislatures. These states boast of the possession of an aristocracy as ancient and as respectable as that of the United Kingdom ; yet none of them have seen fit to adopt our system of a hereditary and Crown-nominated Upper House. In some cases the second chamber is purely elective, in others it is a composite body of elected and nominated members ; and in a third class a small proportion of Hereditary Legislators is added to these two elements. But this proportion is quite insignificant compared with the other constituents, and only serves to emphasise the difference between the chambers in which it is found and our House of Lords. It is clear, therefore, that these nations, in the modernisation of their constitutions, have not found an hereditary Upper House essential to stability and good government.

But it is contended, in answer to this argument, that the conditions and the necessities of these nations are not similar to our own : that the United Kingdom is a great colonising power, and that this fact differentiates it from its European neighbours : that the House of

Lords is the branch of the Legislature which knits the Colonies to the mother country, and that without it the empire would suffer disruption. This is the contention of Mr. W. C. Macpherson, a resident in Australia, who, in a work entitled "The Baronage and the Senate," has appeared as at once the latest champion and the latest reformer of the House of Lords. A great deal more will have to be said concerning that book during the progress of this argument; but with regard to this particular contention, it may be observed that no historical evidence is cited in support of it. If the House of Lords had really operated as a cement which had bound together our colonial empire, it ought not to be a difficult task to prove the assertion. In absence of any such proof, it may be well to call attention to two historical facts which militate against this conclusion. The first is that the House of Lords sprang into existence and practically attained its present state of development, except in respect of mere numbers, before the nation became a very prominent colonial power. It was as a branch of a purely local legislature that it obtained its constitutional influence, and not as part of the Government of a great colonial empire. The second fact is, that the greatest disaster which ever befell the nation as a colonising country, the loss of the American Colonies, occurred at a time when the House of Lords was at the zenith of its power, not only as one branch of the Legislature, but in consequence of its possession of an overwhelming influence in returning members to the House of Commons. In view of these facts it is rather fanciful to attribute to the present constitution of the House of Lords any extraordinary cohesive

force in binding the colonies to the mother country.

The foregoing remarks raise the presumptions that the House of Lords is out of harmony with modern progress and is ill-adapted to modern needs: that the manner of its constitution is not inherently necessary for the well-being of a modern state, and that no compensating advantages in other respects arise from its continued existence in its present form. The task of succeeding chapters will be to show in detail how the Upper House is constituted; to trace its rise and growth as a legislative body; and to examine how far it has proved in recent times a stumbling-block to progress. Finally, it will be necessary to consider what reforms in the constitution of the House will be required to bring it into harmony with modern requirements, and how those reforms may be effected.

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CHAPTER II.

THE COMPOSITION OF THE HOUSE OF LORDS.

IT has already been pointed out that no nation or colony possesses an Upper Chamber at all analogous in constitution to our House of Lords. And certainly, outside Wonderland, or a Gilbert and Sullivan opera, it is difficult to imagine the most wayward constitution-monger proposing the establishment of a similar institution. The House of Lords is composed of two sections, or "estates"—the Lords Spiritual and the Lords Temporal. The former are strictly limited in number to twenty-six, of whom the two archbishops, and the bishops of London, Winchester, and Durham are always members. The remaining twenty-one seats are filled by the other bishops in order of seniority as vacancies arise. Of the Lords Temporal there are three classes: (1) Those who sit as representatives of the Peers of Scotland and Ireland under the Acts of Union—sixteen for Scotland, representing about thirty-seven Peers, who are elected for the current Parliament only; and twenty-eight for Ireland, representing about eighty-nine Peers, who are elected for life; (2) six Law Lords who sit for life only; and (3) Peers who sit by hereditary right, or by virtue of letters patent which confer

hereditary succession. The last section is by far the most numerous. No less than 490 members of the Upper House sit by virtue of such a title. There are about thirteen young gentlemen, now mostly at school or college, who, if they live to attain the age of twenty-one years, will swell the number of hereditary Lords of Parliament; and five representations are in abeyance because the titles are held by women.

There is no constitutional limit to the number of the hereditary members, nor are there any rules, written or customary, which regulate the selection of persons to be elevated to the peerage. The claims most frequently and regularly recognised are political, judicial, military and naval service, and wealth. The exceptions in the cases of the late Lord Tennyson, who represented literature, and of Lord Kelvin, who represents science, cannot be considered to affect the general statement. But the selection from these categories proceeds upon no order or system. It by no means follows that the most eminent men in each class are chosen for the Royal favour; nor does it follow that the abilities of those who are selected lie in the direction of legislation. It is rarely the first-class politician who is chosen as a recruit for the Upper House. Too often it is the exigencies of Cabinet-making which compel the Cabinet-maker so to dispose of a subordinate but too clamorous aspirant to office. Nor does it follow that distinction as a soldier or a sailor implies that kind of ability which will qualify a man to discuss and decide upon the manifold and technical subjects which come before a modern legislature. The claim to become an hereditary law-maker upon the

strength of a huge income or rent-roll is a survival from ancient times, when the owners of the national wealth were few and omnipotent. Nothing is more remarkable than the mediocrity of the men who have been promoted to the Upper House during recent years. A Government disappears amidst a coruscation of honours, and its successor emerges in like manner. The advent of a new year, or the occurrence of the Royal birthday, is deemed a fitting occasion for a similar display. The fact that our sovereign has reigned over us for a period of fifty years is also seized upon for an unprecedented effort in the same direction. The announcement in the newspapers of the names of the persons selected for elevation to the peerage causes a nine days' wonder; and in a very short time, when the title of the ennobled one is casually mentioned, the first question which is generally asked is, who he was before he assumed it. These new Peers have reached the culminating point in their careers, and the doors of the House of Lords close upon them like the gates of oblivion. They are rarely appointed to any but the most subordinate and purely decorative offices in the state: they have been weighed in the intellectual and administrative balances, and have been found wanting. Yet upon all persons promoted to the peerage in this erratic and unsystematic manner is conferred, not only a controlling voice in the legislation of the country for life, but the right to pass on that right to their lineal male descendants.

It will be seen from the foregoing observations that the House of Lords is composed of an overwhelming number of "Hereditary" Legislators. The exceptions are the Bishops, the Scotch and Irish representative

Peers, and the Law Lords who sit for life—seventy-six in all. The remainder sit by “hereditary right.” But Mr. Macpherson, in “The Baronage and the Senate,” although he demonstrates to his own satisfaction that a powerful hereditary chamber is necessary to the greatness and well-being of a state, and although he enunciates the doctrine that “it is the elective principle and not the hereditary that requires to stand on its defence,” nevertheless attempts to show, in answer to the Radical objection to a “hereditary chamber,” that the House of Lords is very largely composed of non-hereditary members. For this purpose he adds to the seventy-six Lords of Parliament already mentioned, eighty-six newly-created Peers, who, he contends, having entered the House by patent, and not by succession, should properly be classed as non-hereditary members.¹ Even if the validity of this somewhat strained piece of special pleading were conceded, it would still leave the members who took their seats by succession in a vast majority. But as an argument the contention is defective, except in the case of a few Peers, twenty-two in number, who entered the House at an advanced age, and who have no successors to their titles. These may be fairly classified as “life Peers,” although the grant of the dignity is to them and the heirs of their bodies. But to include in the same category the man who enters the Upper House, having a descendant living who has a vested right to succeed to the privilege, is a perversion of language. It is only a pedantic method of calling attention to the fact that a hereditary peerage must

¹ “The Baronage and the Senate,” p. 4.

have an origin. These Peers sit by virtue of "hereditary right," not less than those to whom a title has descended, because, unless the peerage is conferred upon their heirs, they have no claim, according to the decision of the House of Lords in the Wensleydale case, either to sit or to vote.¹

These new members of the House of Lords are appointed nominally by the Crown, but really upon the recommendation of the Prime Minister. The Crown is the fountain of honour, and a peerage is considered the highest honour which can be conferred upon a subject. And this confusion of a title of honour, with a title to legislate, is one of the most serious vices that taint the method of recruiting our House of Lords. It is bad enough that titles should be granted without regard to the ability of the recipient for the functions of legislation. It is bad enough that they should be awarded in secrecy, at the sole will of two persons, who must necessarily be subjected to all kinds of pressure in favour of claimants who deem themselves worthy of promotion. But the fact that a peerage is coveted chiefly as a social distinction, the vote in the Upper House which it confers being looked upon as of only secondary importance, must operate disastrously to the formation of an ideal, or even of a satisfactory, legislative chamber. There cannot be a doubt that by far the greater number, not only of the men who are elevated to the peerage, but also of those who have succeeded to titles, value their honours chiefly for the social advantages which they confer. The offer of a seat for life

¹ See *post*, chap. ix. p. 96.

in the Upper House would hardly come as a coveted boon to the class of persons who are most eager for peerages. Such an offer might be accepted under stress of a stern sense of duty, but without the right to transmit a coronet to descendants it would be shorn of its chief attraction. It is the glamour and the glitter of a title, and the adulation that it calls forth, which are its chief attractions. A vote in the House of Lords is a casual and adventitious addition.

From this unfortunate confusion of the conferring of honours with the creation of legislators flow many consequential evils. It tends to create a large number of legislators who have neither aptitude for, nor interest in, the work of legislation. No one can look through the long list of members of the House of Lords without being struck with the small percentage of names which can be associated in any way with conspicuous public service. A vast majority of the Peers are notorious only for a persistent neglect of their legislative functions. On all ordinary occasions the House of Lords presents the appearance of a meeting of a Board of Directors rather than of a great legislative assembly ; and even when questions of importance are discussed, by far the greater portion of the Peers absent themselves from the deliberations of the House. It is only when some great popular measure is sent up from the Commons, upon which vast issues depend, that anything like a full attendance is made in the House of Lords. Then the lobbies swarm with legislators, many of whom are such rare attendants that the officials of the House find a difficulty in identifying them.

Some amusing instances of slack attendance were

cited by Lord Rosebery in 1884. They are best given in the noble earl's own racy language.

"I remember," he said, "a noble earl addressing a quorum of your Lordships,¹ consisting, besides himself, of the noble and learned lord on the woolsack, and the Minister who had to answer him, for four mortal hours by the clock—when this vast hall in which we are seated contained only these three individuals."

Lord Ellenborough: "I beg the noble earl's pardon. I remember the occasion, and I was present part of the time."

The Earl of Rosebery: "The noble lord's attendance, I understand, was only partial, so I may say that there were three and a half persons in attendance. . . . A more legendary instance is one which is attributed to the period when the late Lord Lyndhurst was on the woolsack. There was then a noble and learned lord addressing the House on a question, apparently of no great public interest, and addressing it at some length. Lord Lyndhurst was naturally anxious to attend a dinner to which he was invited; and as the clock got nearer to eight, that learned person grew more and more impatient. He made every sign, he took out his watch, he interrupted; he might have feigned sleep, for all I know; but this produced no effect upon the noble and learned lord who was addressing the House. At last the Lord Chancellor said, 'This is too bad. Can't you stop?' There was no stop. At last Lord Lyndhurst rose, in the full grandeur of despair at the situation, and said, 'By Jove, So-and-so, *I will count you out!*' and it was well within the province

¹ Three members form a quorum.

of the late Lord Lyndhurst to do it, because he and the noble lord who was addressing the House were the only Peers present.”¹

It is urged that the great advantage of an Upper House consists in the calm, deliberate consideration which is given to proposed legislation by men who are qualified to pronounce upon such questions, uninfluenced by the necessity of pandering to popular opinion and independent of the pressure of external influences. But such an advantage must evidently be reduced to a minimum in a House in which the attendance of habitual absentees is in proportion to the importance of the question to be decided upon. The result is that such a question has to be submitted, not to the judgment of men who give persistent and serious attention to public business, but to a host of irregulars, who answer unwillingly to the urgent call of the party whips. Who can deny that the untrained hordes, who on these occasions make irruption into the House, are of all men the least qualified to exercise a beneficial influence over the course of legislation? A large number of them have never undergone the training which would afford such qualification. Independent and well-matured opinion among such men is well-nigh impossible. They are liable to be influenced by class prejudice rather than by argument, and to subject themselves entirely to the guidance of their leaders rather than to form an impartial judgment upon questions submitted to them.

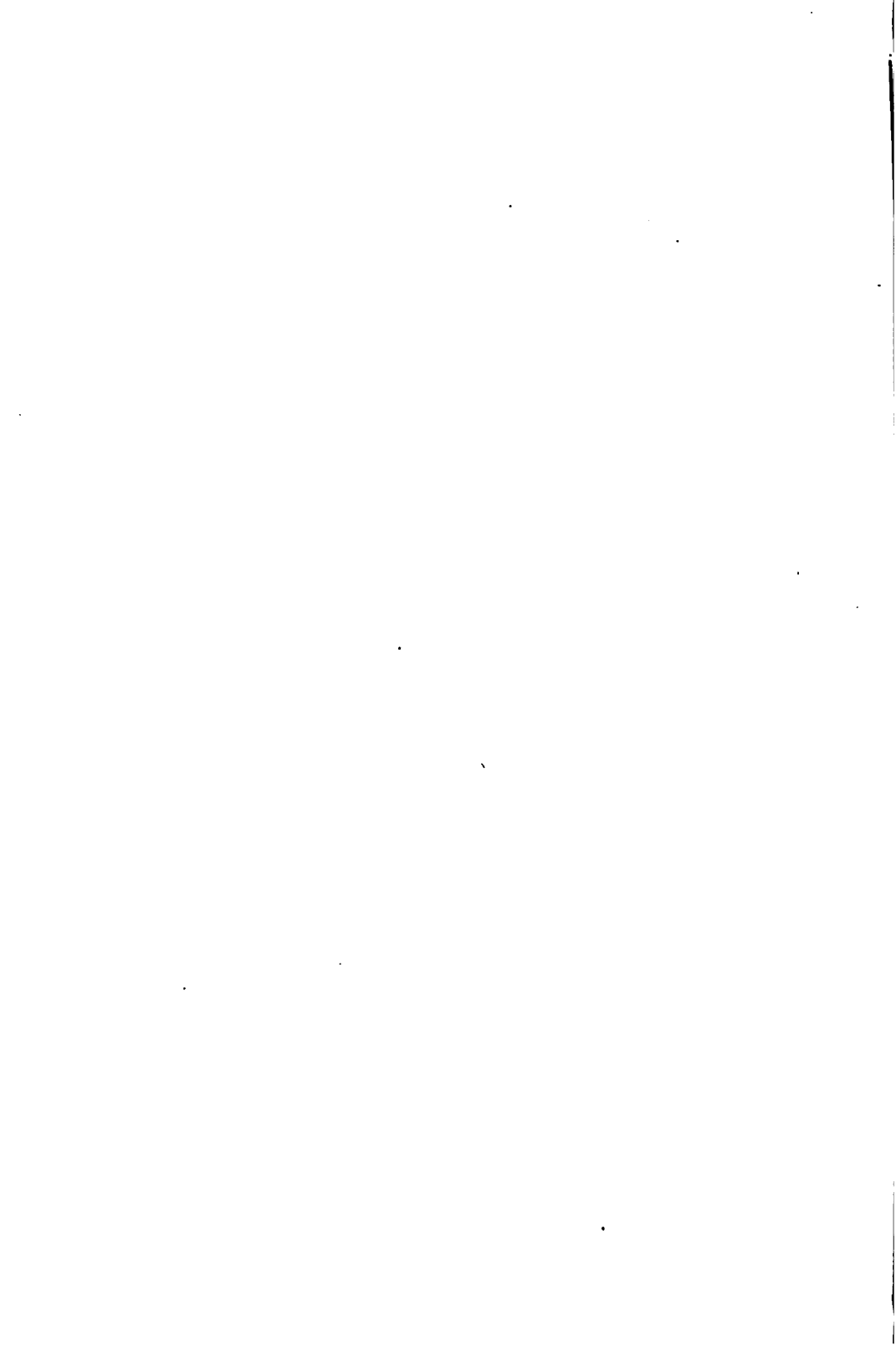
Such are the inconveniences which are caused by the fact that the grant of the highest social distinction, coveted

¹ Hansard, vol. cclxxxix. c. 943.

in most cases for reasons which are largely if not entirely non-political, entails with it the right to a hereditary vote in the family so ennobled. This is not the place for a discussion of the ethics of titles. The love of titles may be very absurd, but it is also nearly universal. The craving permeates our social life from the Court of the Empire to the Society of Oddfellows. Even the breast of a Salvation lass swells with sanctified vanity when she is promoted to the rank of captain. It will be long before we arrive at that higher plane of civilisation where social distinctions shall be considered as naught. And if any Commoner does yearn after a peerage, there is no reason why his harmless ambition should not be gratified. It costs the nation nothing, it pleases him, and if his services are worthy of honour it is not an ungraceful way to honour them. But if we are bound, in thus humouring his vanity, to entail upon him and his male descendants for ever the right of voting in the Upper Chamber, let us consider, not merely the personal feelings of the claimant, but the aspect of the transaction as regards the nation. Our object is not only to gratify an individual, but to recruit a second chamber of the Legislature. Granting for a moment that the person in question is the ideal man for the latter purpose, what guarantee have we that his successor will prove an able legislator? The second holders of recently created titles have not always been ornaments of the Upper House. What right have we to say that a person, possibly unborn, shall have an indefeasible controlling voice in the government of our unborn children? Why should we mortgage their interests thus for the gratification of our esteemed contemporary? Let

us recognise at once that it is absurd to associate a hereditary vote in the House of Lords with the grant of the highest hereditary honours. Let the possibility of obtaining such honours remain for those to whom they are an ambition. But let us also see if it be not possible, in this last decade of the nineteenth century, to select our Upper Chamber by some process which offers a greater guarantee of fitness than the dictum of a Minister or the accident of birth.

HISTORICAL.



CHAPTER III.

THE EVOLUTION OF THE PEERAGE,

HAVING described the present constitution of the House of Lords, it is now necessary to consider historically the steps by which it sprang into existence and gained its position as a legislative body. This investigation is essential for the purpose of this inquiry, and will not be without practical value. The history of the House of Lords discloses many facts with regard to its earlier constitution which will prove instructive when the question of reform is considered. It also furnishes illustrations of unsuccessful attempts at reconstruction, which illustrate the dangers which the reformer has to encounter.

The House of Lords had its origin in the feudal system, which was not fully developed in England until after the Norman Conquest. But although the Conqueror remodelled English Government upon the foreign type, he was prudent enough to do so with a difference. In making grants of lands to his victorious followers, to be held of the Crown upon the feudal tenure, he created, in favour of each grantee, several small baronies distant from one another, instead of one large fief. He also exacted the oath of allegiance to the Crown from all free-

holders, whether holding directly from the Crown or from the tenant-in-chief. These measures prevented the tenants-in-chief from developing into petty sovereigns, practically independent, and owning only a nominal allegiance to their Lord Paramount, the King—a course of events which proved so disastrous to the commonweal in France and in Germany.¹

These tenants-in-chief of the King, the Barons by tenure, were entitled to be summoned by writ to the King's Council, which is the origin of our modern Parliament. It was in virtue of the duties imposed upon them by the feudal system of government that they obtained this right. They were responsible, so far as their own fiefs were concerned, for the military defence of the realm; through them the Exchequer was replenished, and upon them devolved to a great extent the maintenance of order and the administration of the law in their several baronies. In an age when the idea of representative government was only in the germ, these men approached as nearly to representatives of their sub-tenants as was possible in the circumstances. The interests of their feudatories were their interests, the prosperity of their feudatories was their prosperity. The idea of a "Lord of Parliament" occupying that position by virtue of any other title than the performance of great state duties would have appeared as grotesque to those old Barons as it is beginning to appear to ourselves.

By reason of this identity of interest between the Barons and their feudatories, the former were always

¹ Hallam, "Middle Ages," vol. ii. pp. 430, 433.

forward in resisting the encroachments of the Crown upon the liberties of the people. It is not too great a misuse of terms to say that they were the Radical reformers of their time. The Magna Carta, concerning which Bishop Stubbs remarks that "the whole Constitutional History of England is a commentary on this Charter,"¹ and the subsequent confirmations of the rights thereby secured, were wrung by the great Peers from unwilling monarchs by force, or threats of force. The policy which the Conqueror pursued towards his tenants-in-chief had this salutary effect. By preventing them from following a petty policy of personal aggrandisement in the establishment of small independent states, it forced them into the position of defenders of the liberties of a great nation.

Such being the relations between the Crown and the nobles, it followed almost inevitably that the chief personal right which the latter were called upon to defend was the right to a writ of summons to the King's Council. This was originally, no doubt, a matter of discretion for the King. The tenants who held small fiefs of the Crown were willing to ignore the summons, and in time ceased to receive it. This gave rise to the distinction between the greater and the lesser Barons. The Crown, in its struggle with the Peers, was tempted to refuse the summons to those who opposed its wishes. Hence one of the rights established by Magna Carta was the right of the greater Barons to be summoned by writ personally. The lesser Barons were to be summoned by a writ addressed to the Sheriff of the county.²

¹ "Select English Charters," p. 288.

² "Magna Carta," c. 14. "Select English Charters," p. 290.

These latter gradually ceased to exercise their right of attending the King's Council. The greater Barons became the nucleus of the House of Peers, the lesser Barons being ultimately represented in the Commons by the Knights of the Shires.

These Barons by tenure attended the King's Council, therefore, as representatives of their feudal territories, and the right to a summons followed the descent of their lands. But it is clear that, in the earliest times, if those lands passed out of the family of the original grantee, his descendants lost the right to a summons, and the actual holder was entitled to be called to the Council. Even if the lands descended to a sole heiress, who was incapable of performing all feudal duties, her husband was summoned to the Council, and this right was continued to him, though a stranger in blood, if after her death he remained in possession of the estates as tenant by the courtesy of England.¹ The early conception of a peerage, therefore, was that it was a dignity appertaining to an individual upon whom the discharge of important state duties devolved, regardless of descent, although, from the necessity of the case, mainly regulated by it.

In course of time the Crown exercised the right of summoning to the Council other persons who were not necessarily Barons by tenure, although they frequently held lands of the Crown. These persons were not considered hereditary Peers in the first instance, nor did a summons even confer a right to attend the Council for life. The records show that many persons were

¹ Hallam, "Middle Ages," vol. iii. p. 184. "Dignity of a Peer," Third Report, p. 28.

summoned once only, others more frequently.¹ But in process of time the right to a writ became hereditary, and the modern doctrine is that since the fifth year of Richard II. a writ of summons, coupled with proof that the person summoned actually sat in the House of Lords, conferred a hereditary peerage.² In this respect a peerage by writ differs from a peerage created by patent. In the latter case the hereditary honours devolve upon the descendants of the grantee, although he may never have taken his seat.

There was another method of creating Peers which is of considerable interest, because it shows that there was for some time a tendency to admit the influence of the popular voice in the selection of Peers. The creation of peerages by statute, that is, by the King in Parliament, was at first confined to the granting of steps in the peerage. But the patent creating Sir John Cornwall Lord Fanhope in 1432 states that the grant was made "by consent of the Lords in the presence of the three estates of Parliament." In many subsequent patents the assent of Parliament is more clearly expressed, and in some cases it is stated upon the roll of Parliament.³ It must be remembered that the first creation of a peerage by patent in 1382, when Richard II. raised Sir John Holt to the House of Lords by the title of Lord Beauchamp of Kidderminster, was looked upon as an unconstitutional and arbitrary act, and Sir John Holt was subsequently impeached as a Commoner.⁴

¹ "Dignity of a Peer," Third Report, p. 102.

² Ibid. Fourth Report, pp. 323, 324.

³ Hallam, "Middle Ages," vol. iii. p. 192. "Dignity of a Peer," First Report, p. 12; Third Report, p. 40.

⁴ Hallam, "Middle Ages," vol. iii. p. 194.

It may have been to meet this objection that a recital of the consent of Parliament was afterwards inserted in patents. But no such statement occurs in any patent after the accession of Henry VII. The strengthening of the Royal authority during the Early Tudor period enabled the sovereign to do away with even the formality of consulting Parliament upon the creation of Peers. But these indications, together with the fact that in 1477 George Neville, Duke of Bedford, was deprived of his peerage by statute,¹ go to prove that there was a tendency during the pre-Tudor period to bring the composition of the House of Lords within the cognisance of Parliament—a tendency which was checked by the practical annihilation of the old baronage, and the weakening of the popular influence in government which were the consequences of the Wars of the Roses. Thenceforth peerages were only created by patent, which were the sole act of the monarch, and the arbitrary and unconstitutional proceeding of Richard II. became the recognised and constitutional practice of later generations.

But the temporal Peers were not the only persons who were summoned to the King's Council, and subsequently to the House of Lords. Indeed, until the Reformation, when the Abbots and Priors were deprived of their seats, the Lords spiritual outnumbered the Lords temporal, and it follows, therefore, that until that date the majority of the Lords were life members. After the Reformation only the Archbishops and Bishops retained their seats, but even then they con-

¹ "Dignity of a Peer," Third Report, p. 221.

stituted about a third of the House. All these Church dignitaries sat, or were supposed to sit, by virtue of tenure,¹ but many were summoned from time to time who had not this qualification. There are records of Abbots and Priors who, even after having obeyed a summons to Parliament, protested against attendance, and were relieved from it on the ground that they held nothing of the King.² This seems to point to the fact that the same process which was at work in the lay portion of the House of Lords, the selection of members apart from the question of tenure, was operating with regard to the spiritual Lords also. This may be described as an effort to strengthen the House by summoning to its Councils the ablest men, in spite of the fact that they did not possess the strict legal qualifications for membership. But it was open to any man so summoned, even if he had previously consented to serve, to plead the technical disability under which he laboured. And this appears to have been done not infrequently.

The tendency, in these early times, to summon a large number of ecclesiastics to Parliament must have been inevitable. They were the sole repositories of learning, and from their ranks the greatest officers of state were often selected. They were the possessors of enormous wealth, part of which, at any rate, was spent in the public service. In days when the proudest Baron felt no sense of humiliation in the confession of his inability to read and write, the assistance of clerics in Council was essential. To all this must be added.

¹ "Dignity of a Peer," First Report, p. 46.

² Hallam, "Middle Ages," vol. iii. p. 182.

the fact that the Bishops, Abbots, and Priors exercised an unbounded influence over the lower orders of society. It is not surprising, therefore, that their services were in great demand in Parliament, and that, previous to the Reformation, they should have largely outnumbered the lay Peers in the House of Lords.

Another class of men went near to establish a right to sit in the House of Lords by virtue of their office, in manner similar to the Bishops. In early times the judges were summoned to the House by writ, as advisers or "assistants," but without the right of voting.¹ Their functions were consultative merely. If the Bench had possessed such overwhelming influence as was at the command of the Church, it is probable that the judges would have succeeded in making good their title to sit in the House as life Peers. But this was not the case. The judges of those days were men of little personal influence. They had no security of tenure in their offices: they were liable to removal at the sole will of the Crown. The subordinate position which they achieved is still in some sort recognised by the constitution. The House of Lords has the right, which on rare occasions it exercises, of consulting the judicial Bench,² and the judges go down to the House in full robes to deliver their opinions.

It is always somewhat dangerous to generalise upon questions of Constitutional Law in the endeavour to discover the underlying causes which have produced results that are not in dispute. When a system of government is in the making, each step

¹ "Dignity of a Peer," First Report, p. 449.

² May, "Law of Parliament," p. 236.

achieved is the consequence of a conflict more or less severe ; and it is difficult to lay down any proposition with regard to the process which may not be assailed by the citation of precedents to the contrary. But in spite of this danger, the following statements may be accepted as fairly representing the formative processes which were at work down to the Tudor period in moulding the constitution of the House of Lords :—

1. The feudal Baron by tenure was summoned to the King's Council in virtue of his responsibility for the good government of a portion of the kingdom. The right to this summons was not considered to be hereditary in his family apart from those responsibilities, but the law relating to the devolution of land tended to confirm the right to his heirs.

2. The progress of the nation and the growing complexity of the questions coming before the House made it necessary to summon capable persons to its Councils, although they did not happen to hold lands of the Crown. These persons originally attended only the Parliament to which they were summoned, and there was no intention on the part of the Crown to confer either a hereditary dignity or a hereditary right to legislate ; but a comparatively modern doctrine, attributable to legal astuteness, has declared that obedience to the writ conferred a hereditary dignity in the family of any person so summoned.

3. The modern method of creating a peerage by patent, which undoubtedly conferred a hereditary right, was in its inception an act of arbitrary power. For a long period this usurped right was so jealously watched by Parliament that it was found necessary to declare

the consent of Parliament, express or implied, either in the patent itself, or upon the Parliamentary roll. This custom only fell into disuse upon the accession of the Tudor dynasty to the throne after the country had been prostrated by the Wars of the Roses.

4. Originally the House of Lords was composed of a large majority of life members.

It is clear, therefore, that the conception of a Peer of Parliament, with a hereditary right to legislate without any corresponding hereditary duties to perform, is not based upon ancient constitutional doctrine; that the tendency to recruit the Upper House by life members, or members for a given Parliament, was first checked by civil commotion and then twisted from its original purpose by a legal quibble; and that the modern method of creating Peers had its origin in an arbitrary act of the Crown which Parliament watched with extreme jealousy.

CHAPTER IV.

EXPERIMENTS IN REFORM.

THE accession of Henry VII. found the country demoralised after a long period of vindictive civil war. The old baronage had been nearly annihilated, and the House of Commons was reduced to comparative impotence. Only twenty-nine temporal Peers were summoned to the first Parliament of Henry VII. It became necessary to strengthen the peerage numerically, and although new creations did not follow one another at the rapid rate which has been the rule since the accession of George III., the Peers numbered fifty-nine at the date of Elizabeth's death.¹

But the power of the baronage, which had been largely destroyed by one political commotion, was destined very soon to be restored by a second. The quarrel between Henry VIII. and the Catholic Hierarchy, which resulted in the Reformation and the dissolution of the monasteries, had a vital influence not only upon the composition of the Upper Chamber, but also upon the fortunes of its temporal members. The dissolution of the monasteries removed from the Upper

¹ May, "Constitutional History," vol. i. p. 274.

House the Abbots and Priors, who, with the Bishops, had hitherto formed a permanent majority of the Chamber. After the Reformation the Church was represented by only twenty-five spiritual Lords of Parliament. But it not only deprived the House of Lords of its Abbots and Priors, it also deprived the Abbots and Priors of the ecclesiastical property. This enormous wealth, consisting chiefly of land, which has been calculated to have amounted to one-third the total acreage of England, was forfeited to the Crown. Very little of this vast property was bestowed upon the Reformed Church. The King did indeed create five new bishoprics, but by far the greater portion of the confiscated lands were absorbed by rapacious courtiers to whom the King made grants with lavish hand. The recipients of this Royal bounty, being either Peers or the founders of families who soon entered the peerage, were the origin of a new territorial aristocracy which strengthened the residue which had survived the civil war.¹ It is easy to condemn this spoliation of the monasteries in favour of private individuals, but while doing so we must be careful not to test the doings of the sixteenth century by the ideas of the nineteenth. It was essential for the future prosperity of the nation that all those fair acres should be wrested from the grasp of the "dead hand" of the Church. But such a modern notion as "nationalisation" had not even dawned upon the minds of men. Had the lands remained the property of the Crown, they would inevitably have been restored to the Church during the reign of Queen Mary, and the efforts and the sufferings

¹ Hallam, "Constitutional History," vol. i. p. 107.

of the Reformers would have been rendered futile. The very fact that they had fallen into the hands of private individuals rendered this catastrophe impossible. So large a number of the governing classes were interested in maintaining the validity of the grants of Henry VIII. that it was out of the power of the Crown to recall them ; and so the results of the Reformation were preserved at the cost of an aristocracy re-established and strengthened—strengthened, unfortunately, as the minions and humble servitors of the Crown, not as the independent champions of popular rights ; “ constant,” as Hallam says, “ only in the rapacious acquisition of estates and honours from whatever source, and in adherence to the present power.”¹

The increase in the number of temporal Peers went on rapidly during the reigns of the earlier Stuarts. James I. created sixty-two Peers and Charles I. fifty-nine.² The House of Lords, in consequence of Henry VIII.'s policy, had become the subservient tool of the Crown, and during the reign of James I. the struggle against the efforts of the Crown to maintain and to augment the personal prerogatives which had been claimed by the House of Tudor remained solely with the Commons. The creations of James I. did not tend to make the Lords less subservient than before. The favourites of the King, persons who flattered his egregious vanity, were promoted to the peerage, and in some cases titles were even sold to wealthy upstarts. Under Charles I., however, a certain amount of half-hearted patriotism was stirred up in the breasts of the Peers by the endea-

¹ Hallam, “Constitutional History,” vol. i. p. 65.

² May, “Constitutional History,” vol. i. p. 274, note i.

vour of the King to encroach upon their privileges; more particularly in the case of the Earl of Arundel, who was imprisoned during the sitting of Parliament, and the refusal of a writ of summons to the Earl of Bristol, who, as a Peer by patent, was legally entitled to it.¹ In both cases the Lords successfully asserted their privileges against the Crown. These aggressions, together with the attempt of the King to revive the ancient forest laws—which revival seriously imperilled the landed property of several wealthy Peers—may account for the fact that so many members of the aristocracy were found upon the Parliament side in the civil war which shortly broke out.

With the various causes which lead up to this outbreak we have little concern, but it is important to note that the last concession of the King to the demands of the Long Parliament was the Royal assent in 1642 to an Act depriving the Bishops of their seats in the Upper House.² The issue of the conflict was the defeat and execution of the King, and the temporary abolition of the monarchy. The Rump of the Long Parliament declared by vote, on the 4th of January, 1648-9, "that the people are, under God, the original of all just power, and that whatever is enacted or declared for law by the Commons hath the force of a law, and all the people of this nation are concluded thereby, although the consent and concurrence of the King or House of Peers be not had thereto."³ A week after the King's execution the monarchy and the House of Lords were abolished by

¹ Hallam, "Constitutional History," vol. i. pp. 517-519.

² *Ibid.* vol. ii. p. 161.

³ *Commons' Journals*, vol. vi. p. 111.

unanimous votes of the Commons. The vote against the House of Lords was passed in spite of several previous declarations by the Commons of their intention to respect the rights of the Peers, a few of whom met and deliberated in a more or less perfunctory manner throughout the whole period of civil war. The circumstances attending their dissolution are worth recording. On February 1, 1648-9, two days after the King's death, six Lords being present, a committee was appointed to confer with the Commons on "the settlement of the Government of England and Ireland."¹ The House of Commons refused to receive the Lords' messenger. The House of Lords met, nevertheless, until February 6th, when they adjourned "till 10^o cras."² On that day the Commons had resolved, without a division, "That the House of Peers in Parliament is useless and dangerous, and ought to be abolished: and that an Act be brought in to that purpose."³

For the next four years the Government of the country was carried on under the Rump of the Long Parliament, numbering about eighty members. It is curious to notice how soon the abolition of the monarchy and of the Upper House was followed by the practical abolition of the House of Commons. Hallam truly observes that "it is a singular part of Cromwell's system of policy that he would neither reign with Parliaments nor without them."⁴ But the fault lay as much with the Parliament as with the Protector. The Rump, which could not be induced to extinguish itself, was at last forcibly

¹ Lords' Journals, vol. x. p. 649.

² Ibid. p. 650.

³ Commons' Journals, vol. vi. p. 132.

⁴ "Constitutional History," vol. ii. p. 354.

dissolved by Cromwell in April, 1653. Cromwell then formed a Council of State, which summoned a fresh Parliament of 139 persons from constituencies in England, Scotland, and Ireland. This Parliament, which is known as "Barebone's," or "the Little" Parliament, after a restless career of about six months, ultimately resigned its powers into the hands of Cromwell.¹ The Council then drew up the famous "Instrument of Government,"² which for about four years formed the Charter upon which the government of the country depended. This document provided that the supreme legislative authority should reside in one person, and the people assembled in Parliament; and that the style of the "person" was to be "Lord Protector of the Commonwealth of England, Scotland, and Ireland."³ The Protector was to be assisted by a council not exceeding 21 persons.⁴ Parliament was to consist of 400 members for England and the Channel Islands, 30 for Scotland, and 30 for Ireland,⁵ elected for constituencies, so far as England, Wales, and the Channel Islands were concerned, set out in the "Instrument."⁶ Electors were to possess real or personal property to the value of £200,⁷ subject to certain disqualifications which practically disfranchised the Royalists.⁸ All Bills passed by Parliament required the Protector's consent, with this curious qualification, that if he should not give his consent within twenty days after presentation, "or give satisfaction to the Parliament within the time limited,

¹ Commons' Journals, vol. vii. p. 363.

² Whitelock's "Memorials," p. 571.

³ Clause i.

⁴ Clause ii.

⁵ Clause ix.

⁶ Clause x.

⁷ Clause xviii.

⁸ Clauses xiv.-xvi.

then, upon declaration of the Parliament that the Lord Protector hath not consented nor given satisfaction," such Bills should become law, provided that they contained nothing contrary to the terms of the "Instrument."¹ The office of Lord Protector was declared to be elective and not hereditary,² and Oliver Cromwell was named first Lord Protector.³

Thus within five years from the time when the Rump declared that the people, under God, were the original source of all just power, government by a single House had proved unworkable, and the legislative functions were entrusted to a reformed House of Commons, and "one person," who was invested with a strictly limited veto upon its actions. The Parliament which was elected in pursuance of the "Instrument" met on September 3rd, 1654. They immediately resolved themselves into a committee of the whole House for the consideration of that document, and appointed sub-committees to deal specially with certain of its articles. The first point which they debated was whether "the Government should be in one single person and a Parliament."⁴ The result proved that the minority who were opposed to the new form of Government were stronger than had been supposed. On the 12th of September, the Protector, "being acquainted that the debates in Parliament grew high touching the new Government,"⁵ sent for the members, and told them "that there were certain things in the Government fundamental, and could not be altered, the first of which

¹ Clause xxiv.

² Clause xxxii.

³ Clause xxxiii.

⁴ Commons' Journals, vol. vii. p. 367.

Whitelock's "Memorials," p. 605.

was, Government by one person and a Parliament."¹ He therefore compelled each member to sign a document which contained a recognition of himself as the Lord Protector, and an undertaking not to propose or consent to any alteration of this particular "fundamental."² Nevertheless, in spite of this warning, the Commons proceeded to discuss the "Instrument," clause by clause, modifying it in a manner which was extremely distasteful to Cromwell.³ The powers of the Protector were limited in many directions, and it is not surprising that, as Whitelock records, "many things were spoken which gave great offence to the Protector and his Council."⁴ But the fact which finally decided the fate of the Parliament was probably the rejection, on January 19th, 1655, of a clause giving the Protector control of the land and sea forces. "The Protector," Whitelock says, "began to be weary of the Parliament, and to have thoughts of dissolving it."⁵ These thoughts speedily resolved themselves into action. On January 22nd Cromwell's second Parliament ceased to exist, their Bill for settling the government being still uncompleted.⁶

From this period until the summoning of another Parliament in September, 1656, the country was governed in an arbitrary manner that would not have been possible even under the Tudors. Money was raised without authority, men were sentenced to death or imprisonment by illegal tribunals, and, in conse-

¹ Whitelock's "Memorials," p. 605.

² *Ibid.* ; Commons' Journals, vol. vii. p. 368.

³ Commons' Journals, vol. vii. pp. 375-421.

⁴ Whitelock's "Memorials," p. 610 (Jan. 7th).

⁵ *Ibid.* (Jan. 20th).

⁶ Commons' Journals, vol. vii. p. 421.

quence of certain abortive attempts at rebellion, the country was parcelled out into eleven districts, which were placed under the command of major-generals, who ruled like semi-military despots.

The nation was rapidly drifting into anarchy. Government by the House of Commons and one person had failed as signally as had government by the House of Commons alone. Cromwell therefore decided to call another Parliament. He failed to secure a majority at the elections, and in consequence he availed himself of a clause in the "Instrument of Government,"¹ which made the "approval" of the Council a condition precedent to sitting as a duly elected member, for the purpose of excluding about ninety of his opponents.² The "approved" members did little to assist their excluded colleagues. They questioned the Council as to the cause of the exclusion,³ and on receiving the above clause in the "Instrument" for answer, they resolved that the excluded members "be referred to make their application to the Council for approbation, and that the House do proceed with the great affairs of the nation."⁴

"The great affairs of the nation" consisted at first of a Bill for the annulling of the title of the Stuarts, and another for the security of the Protector's person;⁵ but it was not long before they set themselves to the work of constructing another constitution. This took the form of a "Remonstrance" addressed to the Lord Protector, but it was subsequently dubbed with

¹ Clause xxi. ² Commons' Journals, vol. vii. pp. 424, 425.

³ Ibid. p. 426 (Sept. 21st).

⁴ Ibid. (Sept. 22nd).

⁵ Ibid. p. 248.

the more courtly title of "The humble Petition and Advice." The manner in which it was introduced to the House was characteristic. On February 23rd, 1656-7, "Sir Christofer Pack presented a paper to the House, declaring it was *somewhat come into his hand*, tending to the settlement of the nation, and of liberty, and of property, and prayed it might be received and read. . . . Resolved, that this paper offered by Sir Christofer Pack be now read. . . . Resolved, *that a candle be brought in*. . . . Resolved, that the debate upon this paper be resumed to-morrow morning." ¹ How this "somewhat" came into the honourable member's hand may perhaps be explained by an entry in the "Memorials" of Whitelock, Cromwell's confidential adviser, under the same date. "I endeavoured to promote the great business of the settlement of the nation." ²

One of the earliest clauses inserted in the Petition was—"That your Highness will be pleased to assume the style, title, dignity, and office of King." ³ But before the Petition was actually completed, Cromwell, in a speech to the House, declined that honour. ⁴ The clause was therefore altered by the insertion of the title of "Lord Protector of the Commonwealth of England and the Dominions and Territories thereunto belong-

¹ Commons' Journals, vol. vii. p. 496.

² "Memorials," p. 655. Whitelock seems to have been sitting on the fence in this matter. In a subsequent entry he says: "I declined the first delivery of the Petition and Advice, not liking several things in it; but Sir Christopher Packe, to gain honour, presented it first to the House; and then the Lord Broghil, Glyn, I, and others, put it forward," p. 656 (May 1, 1657).

³ Commons' Journals, vol. vii. p. 497. For the whole of the "Petition" see Whitelock's "Memorials," p. 657 *et seq.*

⁴ Commons' Journals, vol. vii. p. 533.

ing," and a paragraph was added empowering Cromwell to nominate his successor.¹

The second clause asked, "That your Highness will for the future be pleased to call Parliaments consisting of two Houses," and the fifth went on to define how "the other House" was to be constituted. The members were not to be more than seventy nor less than forty in number; ² they were to be nominated by the Protector and approved by the House of Commons, and vacancies were not to be filled up without the consent of that House. But by an explanatory Petition these conditions were considerably modified. The issue of a summons to "such persons as your Highness shall think fit to sit and serve in the other House of Parliament" was authorised, but the clause providing for the consent of the Commons to the Protector's nominations disappeared altogether.³

Parliament was adjourned to the 20th of January, 1657-8 to allow "the other House" to be summoned. About sixty persons received writs. Whitelock (who was one of them, as was also Sir Christofer Pack, into whose "hand" the draft of the Petition so mysteriously came) says of them that there were among them "divers noblemen, knights, and gentlemen of ancient families, and good estates; and some colonels and officers of the army."⁴ This is true, but there was also an admixture of a baser element. It is evident that Cromwell, like a prudent tactician, endeavoured to neutralise the oppo-

¹ Clause i.

² The quorum was to be twenty-one.

³ Whitelock's "Memorials," p. 664.

⁴ "Memorials," pp. 665, 666. A list of the members of the new chamber is given. It includes eight peers.

sition of the more determined Republicans by removing them to "the other House"; but in this endeavour he was not entirely successful.¹

On January 20th, 1657-8 Parliament met in two Houses for the first time since February 6th, 1648-9. The Commons were sent for to the Lords' House,² "where the Protector made a solemn speech to them, which was short by reason of his indisposition of health."³ The honours of the occasion were left to Lord Commissioner Fiennes, himself a member of the new "other" House, who favoured the assembly with a long political sermon. "Among the manifold and various dispensations of God's Providence of late years," he said, "this is one, and it is a signal and remarkable providence that we see this day in this place—a chief magistrate and two Houses of Parliament. Jacob, speaking to his son Joseph, said, "I had not thought to see thy face, and lo, God hath showed me thy seed also—meaning his two sons Ephraim and Manasseh. And may not many amongst us well say, Some years since we had not thought to have seen a chief magistrate again amongst us, and lo, God hath shown us a chief magistrate in His two Houses of Parliament!"⁴

Whether the providence was so signal and remarkable as the Lord Commissioner imagined a few short days were to prove.

¹ Sir Arthur Haselrigge was summoned, but he preferred to remain in the Lower House.

² Commons' Journals, vol. vii. p. 579.

³ Whitelock's "Memorials," p. 666.

⁴ Commons' Journals, vol. vii. p. 582. Whitelock's "Memorials," p. 666.

CHAPTER V.

THE COLLAPSE OF THE NEW CONSTITUTION.

LORD COMMISSIONER FIENNES, in the address to the assembled Houses from which a quotation has already been made, observed, "This constitution of a chief magistrate and two Houses of Parliament is not a pageantry, but a real and well-measured advantage to itself and to the Commonwealth, and is so consonant to reason that it is the very emblem and idea of reason itself, which reasoneth and discourseth by a medium between two extremes."¹ These remarks afford one more illustration, if any were required, of the fatuousness of prophecy in political affairs. The "emblem and idea of reason" steadfastly refused to take tangible shape. On the 22nd of January the House of Lords sent a message to the Commons by two of the judges, who sat in the Upper House as "assistants," asking the Commons to join in an humble address to the Protector for the appointment of a day of public humiliation.² The Commons declined to send an answer, and they

¹ Commons' Journals, vol. vii. p. 585. Whitelock's "Memorials," p. 670.

² Commons' Journals, vol. vii. pp. 581, 589.

proceeded instead to debate upon "the appellation of the persons to whom the answer shall be made."¹ A large number of the members of the House of Commons were opposed to the new House of Lords. The debate was adjourned from day to day. On February 3rd the Lords sent another message, asking the Commons to join in an address to the Protector, requesting him to issue a proclamation ordering the departure of all Catholics and malcontents from London for three months. The Commons replied that they would "send an answer by messengers of their own," and continued the debate upon the "appellation."²

"All these passages," says Whitelock, "tended to their own destruction, which was not difficult to foresee. The Protector looked upon himself as aimed at by them, though by a side wind . . . he therefore took a resolution suddenly to dissolve Parliament."³

On Thursday, February 4th, at nine o'clock, the Commons resumed the interminable debate upon the "appellation." At that time Cromwell, who had received news of threatened risings in different parts of the country, was hastening down to the Houses of Parliament. The Speaker interrupted the debate to inform the Commons that the "Black Rod was at the door, with a message from his Highness." The House adjourned the debate "until its return," which proved to be the Greek kalends.⁴ After making a speech to the two Houses, in which, as Ludlow, in his "Memoirs," says, "those that appeared were very ill-treated by him for obstructing that work which he said was so well

¹ Commons' Journals, vol. vii. p. 590.

² Ibid. p. 591.

³ "Memorials," p. 672.

⁴ Commons' Journals, vol. vii. p. 592

begun in order to the settlement of the nation," and assuring "those whom he had called to his other House that, notwithstanding all the practices that had been used against them, they should continue to be Lords,"¹ Cromwell dissolved the Parliament. Thus, after a turbulent existence for fourteen days, the "emblem and idea of reason itself" was prematurely annihilated.

Thus ended the last of Cromwell's Parliaments. On September 3rd, 1658, he died at Hampton Court, and his son, Richard Cromwell, was immediately proclaimed Lord Protector. It is remarkable that amidst the turmoil of the times, and notwithstanding the failure of repeated attempts to restore some form of constitutional government, this succession should have been achieved without disturbance, in spite of the fact that Cromwell had made no legal nomination of his son under the terms of the "Petition and Advice," if, indeed, he had made any nomination at all. But the calm was not for long. Richard was a mere puppet in the hands of his Council. This body, after prolonged discussion, decided to call a new Parliament, and to issue writs for the House of Commons, not, so far as England was concerned, to the constituencies enfranchised by the "Instrument of Government," but to the ancient constituencies.² The "other House" was also summoned. This Parliament met on January 27th, 1658-9. Parties

¹ Ludlow's "Memoirs," p. 228. The "Lords" probably carried their aspirations still farther. Ludlow reports that Lenthall sent a message to Sir A. Hazelrigge to "desire him by no means to omit taking his place in that House, and assure him from me that all who so do shall themselves *and heirs* be for ever peers of England." "Memoirs," p. 227.

² Hallam, "Constitutional History," vol. ii. p. 365.

were equally balanced in the House of Commons. An Act recognising Richard Cromwell as Protector was the first important business before that House.¹ The Republicans called for the instrument by which Oliver Cromwell had appointed his son, but the demand was refused by the "Court party," as Richard's supporters were called, for a very sufficient reason. The constitution of the "other House" was also the subject of a prolonged debate.² At last the Commons decided to "transact" with the other House.³ The first "transaction" appears to have been with regard to a proposed fast. The resolution agreeing to it was ordered to be carried up to the "other House," and this was done with the ceremonies anciently used in approaching the House of Lords. "Those of the other House," says Ludlow, "were wonderfully pleased with this application to them, having waited near three months for it, and, having no business to do, had consumed great store of fire to keep them warm at the publick charge."⁴

The Commons subsequently voted that the vote to "transact" with the other House was not to be held to affect the rights of Peers who had been faithful to the Parliament.⁵ This indication of a tendency to return to the old lines of the constitution was intolerable to the more violent Republican members of Parliament and officers, who at this time ceased to support the Protector, and met as an unauthorised Junto at Wallingford House. This Cabal was not only a threat

¹ Commons' Journals, vol. vii. p. 596.

² Ibid. p. 605.

³ Ibid. p. 609.

⁴ Ludlow's "Memoirs," p. 240.

⁵ Commons' Journals, vol. vii. p. 621.

to the Protector but also to Parliament. On April 18th the Commons resolved that "during the sitting of Parliament there shall be no General Council or meeting of officers of the army without the leave . . . of his Highness the Protector and both Houses of Parliament," and that no person should hold command in the army or navy unless he declared "that he will not disturb nor interrupt the free meetings in Parliament of any members of either House of Parliament, or their freedom in their debates and counsels."¹ The concurrence of the "other House" in these resolutions was requested. The answer of that House was that they would take the resolutions into consideration."²

The result of these proceedings was a meeting which nearly ended in a fight in London streets. On April 21st Fleetwood, the leader of the Republicans, summoned his followers to meet him at St. James's. Richard Cromwell called together the portion of the army favourable to him at Whitehall. The rank and file of the Protector's party rallied to Fleetwood. Richard found himself deserted by all except a few officers. At noon Colonel Desborough came to Richard Cromwell and promised him the protection of the army if he would dissolve Parliament.³ The promise was equivalent to a command. On the following day Parliament was dissolved; the doors of the House of Commons were padlocked, and Cromwell's remodelled House of Lords disappeared for ever from the political scene.

¹ Commons' Journals, vol. vii. p. 641.

² Ibid. p. 642.

³ Ludlow's "Memoirs," pp. 243, 244.

The government of the country thus fell once more into the hands of the army. An informal conference was held between representatives of the army on one side, and certain Republican members of the late Parliament on the other. At this meeting it was resolved to call together all the living members of the Rump of the Long Parliament to constitute a new House of Commons ; that Richard Cromwell's debts should be paid, and that he should be given a suitable pension. The Rump, what remained of it, reassembled on May 7th, 1659.¹ On May 25th Richard Cromwell signed an "acquiescence" in the government of the Commonwealth which was practically an abdication. The Parliament accepted the "acquiescence," and ordained that "the said Richard Cromwell do retire from Whitehall, and dispose himself as his private occasions shall require, in a peaceable demeanour of himself, under the protection of Parliament."² The Great Seal was placed in commission, and the oath exacted from the commissioners was to the following effect: "You shall swear that you shall be true, faithful, and constant to this Commonwealth without a single person, kingship, or House of Peers."³

Nothing is more remarkable in the history of Institutions than the persistence with which men will repeat political experiments which have failed in practice. A certain line of policy which prophecy predicts to be fraught with peace and prosperity produces restlessness and discontent, and has to be abandoned ; yet in a few short years the same policy is again advocated, as

¹ Commons' Journals, vol. vii. p. 644.

² Ibid. p. 665.

³ Ibid. p. 672.

if it were the harbinger of the dawn of a new era. In less than a decade England had ranged the whole gamut of political experiment. Commencing with government by a single House, the Crown and the Lords being abolished, she had speedily found reason to associate with that House a single person in the guidance of affairs. Disappointed in the results of that revision of the constitution, a reformed House of Lords was added to the dual Government. And when that third attempt at reform failed, not less conspicuously than the others, she reverted with a light heart to the single chamber system, "without a single person, kingship, or House of Lords," as if the experiment had not been made within the memory of man and had been found wanting.

The second attempt failed even more speedily than the first. The House very soon came into collision with the council of officers who had called them into being. In reply to a remonstrance from the latter, the Commons on October 12th annulled the commissions of the leading officers, and proceeded to nominate a committee of members to govern the army, and to make fresh appointments to replace the cashiered colonels.¹ But the House overestimated its power. Colonel Lambert, who had long aspired to the succession to the Protectorship, determined to re-enact one scene at any rate in the career of Cromwell. The Commons' Journal for October 13th, 1659, consists of the following significant entry: "This day the *late* principal officers of the army, whose commissions were vacated, drew up forces in and about Westminster, obstructed all passages, both

¹ Commons' Journals, vol. vii. p. 796.

by land and water, stopped the Speaker on his way, and placed and continued guards upon and about the doors of the Parliament House, and so interrupted the members from coming to the House and attending service there." ¹

The government thus fell again into the hands of a self-appointed council of officers, under the name of the Committee of Public Safety. It is probable that at this time General Monk, who held supreme command in Scotland in the name of the Parliament, came to the conclusion that the only way of safety lay through the restoration of the monarchy. Affairs in the south were in a state of anarchy, and the Rump was enabled on December 26th to reassemble. Monk immediately commenced his march into England, ostensibly to protect Parliament in its privileges, and was accordingly commended by that body "for his fidelity and good service." ² A Council of State was elected, consisting of ardent Republicans,³ and a Bill was brought in "for enacting the oath of renunciation of the title of Charles Stewart, and the whole line of King James, to be taken by every member that now sitteth, or that shall sit, in Parliament." ⁴ A month later General Monk arrived in London.⁵ A day or two after he appeared in the House of Commons to be publicly thanked for his services,⁶ and for a short time he acted as though he intended to support the Parliamentary authority. But he soon revealed his intention of becoming their master

¹ Commons' Journals, vol. vii. p. 797.

² Ibid.

³ Ibid. pp. 799-800, 801.

⁴ Ibid. p. 803.

⁵ Whitelock's "Memorials," p. 694. Ludlow's "Memoirs," p. 313.

⁶ Whitelock's "Memorials," p. 695.

by directing the House to arrange for the election of a new Parliament. As the House seemed in no hurry to effect this purpose, Monk recalled the secluded members of the Long Parliament,¹ whose appearance placed the Republican party in a minority. They immediately appointed Monk commander-in-chief of the forces, and resolved that a new Parliament should be summoned for April 25th, 1660.² They sat on until March 16th, 1659–60, when the Bill for dissolving was read a third time, with this significant proviso: "That the single actings of this House, enforced by the pressing necessities of the present times, are not intended in the least to infringe, much less to take away, that ancient native right which the House of Peers, consisting of those Lords who did engage in the cause of Parliament against the forces raised in the name of the late King, and so continued until 1648, had, and have, to be a part of the Parliament of England."³

With this declaration the resuscitated Long Parliament expired. The elections throughout the country for the Parliament—which is known as the Convention Parliament—went strongly in favour of the Royalists.

¹ Commons' Journals, vol. vii. p. 846. This action evidently revived the hopes of restoration in the breasts of the Peers. "The Lords, perceiving which way things were turning, solicited Monk that they might take their places according to ancient custom in the House appointed for their sitting, alleging that nothing done by the Commons without their assent could justly be esteemed legal. But it was not yet time for Monk to discover himself so openly, before the army was better prepared, and the new militia settled; and, therefore, he not only gave a positive denial to their demand, but placed a guard of soldiers upon their House." Ludlow's "Memoirs," p. 327.

² Commons' Journals, vol. vii. p. 848.

³ Ibid. p. 880.

Monk now cast off the cloak of dissimulation which he had assumed. The new House of Commons assembled on April 25th, 1660, and with it, without let or hindrance, the House of Lords met, ten Peers being present.¹ They marked their approbation of the acts of the new saviour of society by sending a deputation to Monk to deliver this message :—

"The Peers in Parliament assembled have commanded me to own your Lordship's valour and prudence in managing the great affairs entrusted to you. And they likewise return your Lordship their acknowledgments for the care and respects which you have expressed to the Peers in restoring them to their ancient and undoubted right. And they hope that God will still bless you in the use of all means for the procuring of a safe and well-grounded peace, according to the ancient and fundamental government of this nation, wherein they shall employ their counsels and utmost endeavours in concurrence with you."²

On the 1st of May, 1660, the Declaration of Charles Stuart, made at Breda, was presented to both Houses of Parliament, and was received with acclamation.³ On the 8th he was solemnly proclaimed King at Westminster Hall gate, "the Lords and Commons standing bare"; "bells rang, the great gun and small shot gave many vollies, and the city was full of Bonfires and joys."⁴ On May 29th Charles II. made his entry into London, and the ancient government by King, Lords, and Commons was thus finally restored.⁵

¹ Lords' Journals, vol. xi. p. 3.

² Ibid. p. 4.

³ Ibid. p. 7; Commons' Journals, vol. viii. p. 5.

⁴ Whitelock's "Memorials," p. 701.

⁵ Ibid. p. 702.

Particular attention has been devoted to this attempted abolition and reconstruction of the House of Lords because of the instruction which may be derived from them. If either experiment were to be successfully made, it could hardly have been made in more favouring circumstances. The abolition of the Upper House was the direct result of a successful rebellion, in which a respectable number of the Peers had sided with the victors. Any effort on the part of the Lords to recover their ancient prerogatives would have been paralysed by internal dissensions, and the effort was never made. The reins of government were in the hands of a man who possessed the ability, had the task been a possible one, to mould the new system into order and cohesion. Yet within ten years Cromwell was obliged to confess to the necessity of "some-what to stand between me and the House of Commons," and conceived the idea of creating a brand-new Upper Chamber.

In carrying out this design he was in no way embarrassed by the members of the abolished Chamber. Only one of the Peers who were summoned to the new House actually took his seat; the remainder abstained, fearing lest a response to Cromwell's writ should imperil their hereditary titles.¹ This was the only opposition which "the other House" met with from the Peers. It may be argued that Cromwell's premature death, so soon after the new chamber had been constituted, prevented the experiment from being fairly carried out. But this is in itself a partial con-

¹ Ludlow's "Memoirs," p. 227. The peer who sat in Cromwell's "other House" was Lord Eure.

demnation of the system. An institution which in itself contained the seeds of vitality could not thus be dependent upon the life of a single man. It is evident, however, that even before Cromwell's death the new House had been smitten with sterility. This may have been due partially to the character of the persons summoned. The majority of them were men of respectability and standing, but there were not wanting persons of an altogether different caste, men like Hewson and Pride, concerning whom so staunch a Republican as Ludlow could say, "The one had been a shoemaker, and the other a drayman, *and had they driven no worse trade*, I know not why any good man should refuse to act with them."¹

But the vital defect of the system lay in the mode in which the Upper House was selected. It was originally intended that its members should be chosen by the Protector with the consent of the Commons, but the latter proviso was, at the instance of Cromwell's friends, eventually struck out.² The original proposal was a return to a method of appointment which at one time nearly established itself in the constitution of the country—the nomination by the King in Parliament. The amended system of nomination by the head of the state retained all the vices of the old *régime* without any of its palliations. Nomination by the sovereign may be tolerable as a mode of maintaining the numbers of an Upper House, but used for the purpose of creating a new chamber at one stroke it would be insupportable. The nominees in such a case must of

¹ Ludlow's "Memoirs," p. 227.

² See *ante*, p. 43.

necessity be the facile tools of their creator. They would become a body-guard surrounding the Crown which would protect it from every popular influence. There could be no harmony between such a House and one elected by popular vote. It would prove either the tyrant of the Commons, or else must expire of inanition. If this be true, it is perhaps well that the latter fate overtook Cromwell's House of Lords, and that its activities were limited to the consumption of "great store of fire at the public expense."

CHAPTER VI.

THE RESTORED HOUSE OF PEERS.

THE House of Lords was restored to its constitutional privileges by no special act or resolution. It reassembled on April 26th, 1660, with no greater formality than was customary after an ordinary adjournment. The number of members who drifted into the House on subsequent days gradually increased. The Peers who first returned to their seats were chiefly the Presbyterian Lords; but as the numbers swelled, the Royalists became the majority. With regard to three classes of Peers a difficulty arose. There were those who had succeeded to their titles during the interregnum. These were summoned by letters issued to them by the House of Lords. Those Peers who had openly sided with Charles I. constituted a second class.¹ At first these did not appear, but the absurdity of excluding the supporters of the triumphant party became too apparent, and they soon took their seats without protest.² The third class, consisting of adherents of the Royalist party who had been created Peers since 1642, were the cause of greater hesitation. On May 4th the House of Lords suspended the issuing

¹ Lords' Journals, vol. xi. p. 13.

² Hallam, "Constitutional History," vol. ii. p. 404.

of letters to these claimants;¹ but on May 31st, two days after the entry of Charles II. into London, the Earl of Berks was directed to acquaint the House with the King's desire that these Lords should sit in the House as Peers. The Lords replied that "matters of honour do belong to his Majesty, and this House doth acquiesce in his Majesty's pleasure;"² and the former resolution was cancelled.

The House of Lords was now completely restored, except in one important particular. The Bishops of the Church of England were still absent. It will be remembered that they had been excluded by an Act of the Long Parliament which had received the Royal assent. It was therefore necessary that this Act should be repealed before the Bishops' seats could be restored to them. This the Convention Parliament would not consent to. But its successor, which was elected early in 1661, proved more compliant. One of its first steps was to bring in a Bill for the repeal of that Act.³ Strange to say, the Bill met with opposition in the Upper House. The Catholic Peers, headed by the Earl of Bristol, supposed that, if the Anglican Bishops were readmitted, the legislation which Charles, when in exile, had promised in favour of the Catholics would be rendered impossible. The Earl of Bristol so far gained the ear of the King, if Clarendon is to be believed, that Charles II. himself interposed to delay the progress of the Bill through the House of Lords.⁴ But the delay was only temporary, and on July 30, 1661, just before

¹ Lords' Journals, vol. xi. p. 13.

² Ibid. p. 50.

³ Commons' Journals, vol. viii. pp. 261, 266, 267, 270.

⁴ Clarendon, "Life," pp. 139, 140.

a prorogation, the Royal assent was given to the Bill.¹ On November 20th the Bishops resumed their seats.²

It cannot be said that the restored constitution commenced its efforts in government auspiciously, or that the House of Lords showed any conspicuous desire to prove that the declaration of the Rump as to its uselessness and dangerousness was unjustified by fact. The acts of a party which has undergone a long period of defeat and persecution, and which has been restored to power rather by the proved incapacity of its adversaries than by its own inherent merit, must always be judged leniently. But no amount of palliation can excuse the flagrant breaches of faith of which the Government was so speedily guilty, and against which the House of Lords, whose avowed business it was to check the hasty and erroneous action of the popular chamber, made no effective protest. The two most important promises contained in the Declaration of Breda, upon the faith of which Charles II. was restored to the Crown, were—(1) a pardon to all rebels who should surrender within forty days, except such as should be excluded by Act of Parliament, and (2) "a liberty to tender consciences, that no man shall be disquieted or called in question for differences of religion which do not disturb the peace of the kingdom." With regard to that promise of pardon, which had been accentuated by a proclamation issued by the King on his landing at Dover, it had been understood, and Monk had advised, that not more than four persons who had been prominent in promoting the execution

¹ Lords' Journals, vol. xi. p. 330.

² Ibid. p. 332.

of Charles I. should be excepted.¹ This, although not expressly stated, was an honourable understanding, and for the sake of the permanence of the new Government, wisdom would have dictated that the proscription should be minimised. But the introduction of the Indemnity Bill roused the passions of men, and a reign of terror ensued, during which members of Parliament sought to wreak vengeance on adversaries by including them in the list of persons excepted from the protection of that Act, while friend strove to shield his friend by struggling for his exclusion. The result was that the Bill was sent up to the Lords excepting from the indemnity all persons who sat in judgment on Charles I. and who had not surrendered, and several others by name. This was a clear violation of the spirit, although not of the letter, of the Declaration of Breda ; and as it was evident that many names had been included, not from high political motive, but on account of personal spite, it might have been expected that the House of Lords, approaching the question in a judicial spirit, and unswayed by the temporary impulses of the multitude, would have modified the Bill in the direction of mercy. But this was by no means their action. They enlarged the proscription by excluding every one who had signed the death-warrant of Charles I., regardless of whether they had surrendered under promise of pardon or not, and five other persons. They also added a proviso that four persons, who sat upon the trial of four members of the House of Lords during the Commonwealth, should be excepted. This vindication of

¹ Hallam, "Constitutional History," vol. ii. p. 413.

the divine right of Peers was scandalous enough ; but if they acted in the manner attributed to them by Ludlow,¹ and allowed the next relations of the executed Peers to select each a victim, their conduct was worthy of some Oriental despot or Old Testament hero rather than of civilised beings. The story was evidently believed by Hallam,² but it must be remembered that Ludlow was at the time hiding for his life, and not in a position to obtain accurate information. The Lords' Journals contain nothing in support of the assertion,³ and the conduct of the Peers in the matter of the indemnity was sufficiently atrocious without this last imputation of barbarity. The Commons were more merciful than the Lords. They reduced the extended list of the proscribed, and they introduced a proviso that none who had availed himself of the proclamation should be executed except under a special Act of Parliament passed for the purpose.⁴ Thirteen persons were actually executed ; or, if the subsequent judicial murder of Vane be included, fourteen.

Such was the breach of faith of the Royalists, and such the moderating influence of the House of Lords, in

¹ Ludlow's "Memoirs," p. 353.

² "Constitutional History," vol. ii. p. 415.

³ Lords' Journals, vol. xi. p. 119. The entry is : "The Lord Robertes reported 'that the opinion of the committee was that four persons, who sat upon the trial of the Earl of Derby, Earl Holland, Earl Cambridge, and the Lord Capell, shall be totally exempted out of the Bill of Indemnity. That those four persons are John Blackwell, Colonel Croxton, William Wyberd, and Edmond Waringe.' The question being put, whether to agree to the report of the Committee, It is resolved in the affirmative. Ordered, that the aforesaid four persons be secured forthwith."

⁴ Hallam, "Constitutional History," vol. ii. p. 416.

dealing with political opponents. Their breach of faith in the question "of liberty to tender consciences" was still more conspicuous and unwarrantable. In the former case they were dealing with foes, in the latter with friends. Mr. MacPherson, in "The Baronage and the Senate," justifies the Restoration legislation against Dissenters on the ground that the Government was dealing with political enemies whom it was bound in self-defence to reduce to impotence.¹ This is an argument which is only rendered plausible by a consistent omission to state the ascertained facts of the case. These facts are—(1) that one of the conditions under which Charles II. was restored was, as stated by himself, that "no man shall be called in question for differences of religion which do not disturb the peace of the kingdom," and (2) that among the persons against whom the repressive legislation was directed were the Presbyterians, who had been mainly instrumental in effecting that restoration.² It could not therefore be argued that the "differences of religion" represented by the Presbyterians tended to "disturb the peace of the kingdom." Yet no sooner was the Royalist party restored to power than they proceeded to kick down the ladder by which they had mounted to it. By a series of acts of the most drastic and cruelly restrictive character, they proceeded to render the very existence of a Presbyterian intolerable. By the Corporation Act Nonconformists were to be excluded from all corporations, and by consequence, accor-

¹ "The Baronage and the Senate," p. 158 : "The civil disabilities imposed on the English Protestant Dissenters constituted a measure, not of religious persecution, but of national insurance."

² Hallam, "Constitutional History," vol. ii. p. 429.

ding to the then mode of election, from assisting in the return of borough members for Parliament in very many cases, unless they abjured the covenant.¹ The Uniformity Act required all beneficed ministers, fellows of colleges, and schoolmasters to declare their adhesion to everything contained in the Prayer Book.² This Act caused two thousand ministers, many of whom, trusting in Charles's fair promises, had been supporters of the restoration, to be ejected from their livings.³ The "Conventicle Act" went further, and endeavoured to prevent the ejected ministers from officiating in any manner, by making it penal for any person over the age of sixteen to attend a religious service not conducted according to the practice of the Church of England.⁴ And, lastly, the "Five Mile Act" forbade any one in Holy Orders, who had not taken the oath of Uniformity, to come within five miles of any city, corporate town, or political borough.⁵ Such was the ascending scale of persecution which represented Charles's method of keeping his promise of liberty to tender consciences, which a reckless House of Commons formulated, and a restored House of Lords, acting as the moderating influence in the Legislature, endorsed; and such is the outcome of senatorial wisdom which Mr. MacPherson calls upon his readers to admire. It is true that the latter Acts received some semblance of justification from the discontent which was engendered by the earlier; but in this respect Hallam's wise comment, which has a wider application than that to which it is confined,

¹ 13 Car II. c. 1.

² 13 and 14 Car. II. c. 4.

³ Hallam, "Constitutional History," vol. ii. p. 461.

⁴ 16 Car. II. c. 4.

⁵ 17 Car. II. c. 2.

should be remembered : " It is the natural consequence of restrictive laws to aggravate the disaffection which has served as their pretext, and thus to create a necessity for a Legislature that will not retrace its steps, to pass onward in the course of severity." ¹

Another scandalous act of injustice was perpetrated by the restored Government, and it cannot be passed over without notice, because it vitally affected the interests and the position of the land-owning class, and, therefore, of the House of Lords. The system of military tenures had been a permanent source of revenue to the Crown. The charges in respect of such tenures, which had been imposed upon the holders of the land as a consideration for the possession of it, or were commutations in respect of services due on the same account, had long been felt burdensome, and were ill adapted to the altered circumstances of the time. It was inevitable that they should be abolished, and that some other source of revenue should be provided to meet the deficit of income caused by that abolition. It would be thought that there could be no question as to the proper method of meeting such a deficit. The revenue which was to be surrendered arose out of and was a charge upon the land ; but, on account of the uncertainty of its incidence, it operated as a grievous injustice in particular instances. Manifestly an equalised land tax would have met the necessities of the case. Such a proposal was indeed made in Parliament, but the landed interest was too strongly represented, and it met with little support. Instead of a land tax, Parliament granted an excise in

¹ " Constitutional History," vol. ii. p. 473.

lieu of the feudal payments, and thus relieved the landlords from an enormous charge, which was cast upon the nation.¹ Such a shameful act of class legislation was a disgrace to the House of Commons, but to the House of Lords it was a still blacker disgrace. By a vote of their own House they relieved themselves from all the most onerous liabilities in respect of land, by virtue of the payment or performance of which they had originally become entitled to their seats as Peers. Their action is an interesting object-lesson in the amount of trust which may be reposed in a second chamber largely composed of one class of persons, when the interests of the community clash with the interests of individuals.

From the foregoing outline of the action of the restored Government it will be concluded that the House of Lords had not been taught any lessons of reason and moderation from their late humiliation, and that as a check upon rash and unjust legislation they were absolutely useless. But one lesson they certainly took to heart, and that was the lesson of self-preservation. They had learnt that uncompromising defence of the Crown against the just demands of the nation meant for their House at least temporary annihilation. If history were to repeat itself in that respect, their resurrection might be neither so speedy nor so complete. It behoved them therefore, when the two last Stuart Kings had completed the proofs of their incapacity, to control the inevitable revolution by leading it. The Commonwealth was a democratic movement, the revolution of 1688, which placed William III. upon the throne, and ultimately led

¹ Commons' Journals, vol. viii. p. 188; Lord's Journals, vol. xi. p. 225.

to the accession of the Hanoverian line, was aristocratic. By this wise, but purely self-interested policy the Peers obtained an access of power which resulted in an attempt to alter their constitution and to increase the influence of the House of Lords. This attempt will be described in the next chapter.

In the meantime the numbers of the peerage continued to increase steadily. It has been seen that James I. added sixty-two members to the peerage, and Charles I. fifty-nine, including the doubtful creations subsequent to 1642, which were afterwards recognised. Many of these peerages were openly sold. The later Stuarts were no less lavish. Charles II. created sixty-four Peers, and James II., during his short reign, eight. But during the Stuart period, no less than ninety-nine peerages became extinct.¹ The net addition made by the Stuarts to the House of Lords was therefore ninety-four, raising it from the fifty-nine temporal members of which it consisted, to a body of 153. The most ardent admirer of the peerage will hardly contend that the creations of the later Stuarts added either dignity or respectability to the Upper Chamber. If Charles I. sold titles, his son conferred them for less tolerable reasons. The whole atmosphere of the Court was one of riot and unabashed debauchery. The King was the ringleader, and those who most closely followed the Royal example were most certain to receive the Royal favour. At a time when the King's mistresses and bastards were deemed qualified for peerages the standard of eligibility cannot have been placed exceedingly high. It is true that the

¹ May, "Constitutional History," vol. i. p. 274, note 1.

latter qualification has been held valid even in the present century, but not to the same extent or with the same unabashed pride in it. In the earlier period it may have been considered that the English, who had been chastised by Charles I. with rods, had, by the restoration of Charles II., proclaimed their partiality for chastisement with scorpions, and that there was no limit to the insolence that they would tolerate. But this was too hasty a generalisation.

The next political event which had any influence upon the constitution of the House of Lords was the Act of Union of England and Scotland in 1707. This Act, which is so frequently belauded as the outcome of far-sighted statesmanship, was in reality forced upon the unwilling representatives of the two nations by the inexorable logic of events. Since the accession of James VI. of Scotland to the throne of England, the two nations had been united through the Crown only, maintaining their separate Parliaments. In many respects Scotland was still treated by her more powerful neighbour as a foreign country. Scotland was prevented from obtaining the commercial expansion which was necessary to her well-being by the denial of free trade with England and her colonies.¹ The deposition of James II. deepened the hatred of the northern nation for that which had expelled her legitimate sovereign, and Scotland remained frantically Jacobite. This hatred was rendered still more violent by the English Act of Settlement, which confirmed the ultimate succession to the Crown in the House of Hanover. In 1703 the Scots Parlia-

¹ Burton, "Reign of Queen Anne," vol. i. pp. 131, 148.

ment passed an Act, called the Act of Security, which provided that in the event of the death of Queen Anne without issue, Parliament should name a Protestant successor to the throne of Scotland, who should not be the same person who would succeed to the throne of England, unless a treaty between the two nations had been previously signed, securing the sovereignty of the Scotch Crown and kingdom, and the freedom of trade from English or foreign influence.¹ Another Bill, intended to secure the succession to the Scotch Crown to the House of Hanover was contemptuously rejected. In 1703, therefore, it appeared that a total separation of the two countries was far more probable than an incorporating union. This prospect, for England, was a gloomy one. With her own dynasty insecurely seated on the throne, with an inimical, possibly even a Jacobite sovereign reigning in an independent Scotland, closely allied with France, she could look forward to nothing but turmoil and distraction. England, as usual, at first attempted coercion, but she thought better of it.² The bribe of free trade which she was in a position to offer was one which poverty-stricken Scotland was unable to refuse, and the union was eventually completed upon terms, as regarded commerce and taxation, very favourable to Scotland.³ The succession of the House of Hanover in both countries was secured, and Scotland was to be represented in the House of Commons by forty-five members; and in the House of Lords by

¹ Burton, "Reign of Queen Anne," vol. i. p. 153; Lecky, "History of England," vol. ii. p. 52.

² Burton, "Reign of Queen Anne," vol. i. p. 166.

³ Lecky, "History of England," vol. ii. p. 51.

sixteen members, elected for each Parliament by the whole body of Scottish peers.¹ The Crown was restrained from creating any further Scotch titles.

Thus for the first time the principle of election was introduced into the constitution of the House of Lords. It would have been impossible to allow the whole of the Scotch Peers, who were almost as numerous as the English, to sit in the Upper Chamber. But apart from the question of numbers, the status of a Scotch Peer differed greatly from that of an English Peer. Many of the former were mere chiefs of clans, apter for a border foray than for senatorial functions. But even so small a representation as was accorded to Scotland was eyed askance by the English nobility, and their jealousy of the intruders continued for some years. This jealousy was evidenced in a curious manner. In 1711 the Scotch Duke of Hamilton was created Duke of Brandon in the peerage of Great Britain. Thereupon the Lords declared, after hearing counsel at the Bar, that no Peer of Great Britain who was a Peer of Scotland before the Union was entitled to sit and vote in Parliament.² This extraordinary resolution remained on record until 1782, when the question was again raised by the then Duke of Brandon, and was referred by the House of Lords to the judges, who unanimously declared that the earlier decision was illegal, and it was consequently reversed.³ The difficulty was evaded in the meantime by creating the eldest sons of Scotch Lords Peers of Great Britain.⁴

¹ An Act of the Scotch Parliament settled the mode of election.

² Lords' Journals, vol. xix. p. 346. Twenty Peers protested.

³ Lords' Journals, vol. xxxvi. pp. 516-7.

⁴ May, "Constitutional History," vol. i. p. 287.

In two respects the method of selecting representative Peers for Scotland is manifestly unfair. These representatives are chosen by a majority of the Peers qualified to vote, without any provision for the representation of minorities. A Scotch Peer is debarred from sitting in, or voting for members of, the House of Commons. The consequence is that the Peers returned to represent Scotland in the House of Lords are all of one political complexion, and a Peer who finds himself in the minority obtains no representation, direct or indirect, in either House of Parliament. Another injustice is that a Peer of Scotland, who has become either a Peer of Great Britain or of the United Kingdom, still retains his right to vote for representative Peers, in spite of the fact that he has obtained full representation in his own person.¹ It is the fashion in some high quarters at the present day to say that the House of Lords represents more adequately and more fully than the House of Commons the opinion of the nation. If that view be correct we are inevitably forced to the conclusion, from the present composition of the House of Lords, that Scotland is entirely and irretrievably Tory in politics: a conclusion which requires a very lavish endowment of mental blindness to ensure its acceptance.

¹ This was not the case until 1793. May, "Constitutional History," vol. i. p. 289. An attempt was made by Earl Grey to remove some of these objections in 1869. He proposed that the Scotch Peers should sit for life, and that the elections of Scotch and Irish representative Peers should be effected by a system of cumulative voting. But this proposal, like all other attempts at Reform by the House of Lords, came to nothing. Hansard, vol. cxcv. c. 473, 1677.

CHAPTER VII.

THE LORDS ATTEMPT REFORM.

THE first efforts to reform the House of Lords from the democratic side have been described and the causes of their failure have been considered. The next proposal for reform came from the Upper House itself, and was embodied in the Bill which is known as the Peerage Bill of 1719. In order to correctly appreciate the provisions of that Bill, it is necessary to glance at the condition of the country at the time when it was brought forward.

Although the succession of the House of Hanover was provided for by the Act of Settlement, the actual assumption of the Crown by George I. was nothing less than a bloodless revolution. A few Tories had been active in promoting the bringing-in of William III., but at the death of Queen Anne these were Jacobite almost to a man, and it seemed more than probable that the elder Pretender would succeed his sister. The accession of George I. was due solely to the action of the Whig party. This sovereign was a foreigner, hardly speaking the English language. His interests were in Hanover, not in Great Britain, and it was inevitable that he should

leave the reins of government largely in the hands of those powerful Whig Lords who had been instrumental in placing him upon the throne. There was a strong Jacobite party in England, although the Whigs secured a majority at the general election in 1715, and within a year of his accession George I. had to encounter insurrections both in England and Scotland in favour of the Pretender. So strong was the Jacobite feeling in England, and so uncertain were the Government as to the result of an appeal to the constituencies in 1718, that, after the Jacobite rising had been quelled, an Act was passed extending the duration of Parliament from three to seven years. The Septennial Act has been denounced, not only by Tory writers, but also by some modern Radicals, as an outrage upon the constitution. Such criticism ignores the conditions under which the Act was brought forward. The law limiting the duration of Parliament to three years had only been in existence since 1694. Previous to that date the length of a Parliament had depended solely upon the will of the sovereign. The absurdity of the contention that it is unconstitutional to alter an Act of twenty-two years' standing must be manifest without argument.¹ The policy of the Septennial Act is another question; but considering the disturbed state of the country and the activity of the adherents of the Stuarts, only those who imagine that a third restoration of that family would have been a national blessing are entitled to inveigh against it.

Another set of circumstances have also to be re-

¹ Barnett Smith, "History of the English Parliament," vol. ii. p. 231.

membered. The wholesale creation of Peers by the Stuarts had caused not unreasonable dissatisfaction, not only on account of the numbers merely, but also on account of the character of many of the persons who had been elevated to the peerage. Towards the close of the reign of Queen Anne the Tory party advised the creation of a batch of twelve Peers, in order to secure the assent of the Lords to the Peace of Utrecht.¹ This was the first case in which the prerogative of the Crown had been used to secure a majority for the Government in the House of Lords, and it was looked upon by many as an arbitrary stretch of that prerogative. The balance of parties was restored by the Whigs upon the accession of George I.; but Englishmen saw with disgust that the King's Hanoverian favourites were as clamorous for titles as had been the Dutch followers of William III. Recent events, therefore, had inevitably suggested the questions whether the Upper Chamber was to be a chameleon that changed its colour with every change of Government, and whether it was always to remain capable of indefinite expansion.

Such were the circumstances in which the Peerage Bill of 1719 was brought forward in the House of Lords. It is sometimes asserted that an attempt was made to rush the Bill through Parliament. This is not supported by the facts of the case. As the proposed legislation limited the prerogative of the Crown to create Peers it was necessary to obtain the consent of the King before any further steps were taken. On the 2nd of March, 1718-19, Earl Stanhope announced

¹ Lecky, "History of England," vol. i. p. 121.

"that his Majesty had commanded him to deliver a message to this House, under the Royal sign manual." The message, which was read by the Lord Chancellor, was that—"His Majesty, being informed that the House of Peers have under consideration the state of the peerage of Great Britain, is graciously pleased to acquaint this House that he has so much at heart the settling of the peerage of the whole kingdom and constitution of Parliament in all future ages that he is willing that his prerogative stand not in the way of so great and necessary a work."¹ The King, therefore, fully understood that it was intended to restrict the prerogative of the Crown in this respect. Those who are interested in representing George I. as a mere puppet in the hands of the Whig Lords find no terms of reproach sufficiently forcible to characterise his action. But it should be remembered that the prerogative to create Peers, so far as the Scottish peerage was concerned, had recently been abolished by Act of Parliament. It cannot, therefore, have appeared to the King a very outrageous demand that he should submit to a limitation of this prerogative in regard to the peerage of Great Britain. With the nature of the reform ultimately proposed he had nothing to do. He merely consented to allow the reform to be attempted. Had he refused, and thus prevented the experiment, it would hardly have been counted to him for righteousness, even by those who condemn his acquiescence.

The King's consent having been obtained, the question was referred to a committee of the whole

¹ Lords' Journals, vol. xxi. p. 84.

House.¹ The committee proceeded in the most deliberate and public manner by reporting a series of eleven resolutions, which were accepted by the House, with slight amendments ; and the judges were ordered to prepare a Bill in accordance with their terms.² The first six resolutions dealt with the Scotch representative Peers. They provided for the abolition of this representation, and for the substitution of twenty-five Scotch Peers who were to have hereditary seats in Parliament.³ Nine of these were to be appointed at once,⁴ but the remaining sixteen, although appointed, were not to sit until the next Parliament unless they were of the number of the sixteen Peers then sitting by election.⁵ On the failure of heirs to any such peerage another Peer of Scotland was to be appointed to a hereditary seat ;⁶ and the succession to these Scotch representative titles was to be brought more into harmony with the modern English custom of creation by a declaration that they were to be limited so as to descend through males only.⁷

This scheme no doubt recommended itself to the Scotch representative Peers in the House, because it manifestly gave them what may be termed a "first call" upon a hereditary seat. Some of them went so far as to declare that, if such an arrangement had not been anticipated by the Scotch Peers when the Act of Union was passed, they would never have agreed to that Act. But this does not seem to have been altogether the opinion of the electoral body which returned them to

¹ Lords' Journals, vol. xxi. p. 84.

² Ibid. pp. 89, 90.

³ Resolution 1.

⁴ Resolution 3.

⁵ Resolution 4.

Resolution 5.

⁷ Resolution 7.

Parliament, for the Scotch non-representative Peers petitioned the House against the Bill.¹ It is not easy to estimate the balance of advantages and disadvantages in this proposal. The English Peers were doubtless anxious to abolish the elective principle which had been recently introduced into their body, and this, from the point of view of constitutional progress, would have been a loss. The abolition of the representation of the Scotch Peers so soon after they had been deprived of their seats in their own Parliament must doubtless have appeared an injustice to all but those who hoped to obtain a hereditary seat. On the other hand, the proposed new mode of creation would at any rate have afforded the political minority an opportunity of securing some voice in the management of public affairs, from which, by the provisions of the Act of Union, they were practically excluded.

But these resolutions with regard to the Scotch peerage, although they appear first in order, were merely subsidiary to the larger changes in the constitution of the Upper Chamber which were in contemplation. The remaining resolutions provided that, with the exception of princes of the blood royal, who might at any time be created Peers, the number of peerages should not be increased by more than six beyond the number at which they then stood;² and that after that number had been completed the Crown should only be allowed to create Peers to fill vacancies caused by the extinction of peerages. No future peerage was to be granted for any

¹ Lords' Journals, vol. xxi. pp. 108, 119.

² Namely, 178. Lecky, "History of England," vol. v. p. 26.

larger estate than to the grantee and the heirs male of his body.¹

These resolutions were agreed to on March 5th, 1718-19.² The Bill drawn up by the judges in accordance with them was read for the first time on March 14th,³ and for the second time on March 16th, and it was then referred to a committee of the whole House.⁴ It was reported to the House on April 6th, and, after a few insignificant amendments had been agreed to, it was ordered to be engrossed.⁵ The third reading was fixed for April 14th,⁶ but on that day it was postponed for a fortnight.⁷ Before the fortnight had elapsed Parliament had been prorogued, and the session had been brought to an end.⁸ In the following session, which commenced on November 23rd, 1719, the Bill was immediately reintroduced,⁹ the various stages were rapidly pushed forward, and it was read a third time on November 30th, and sent down to the House of Commons.¹⁰ The Bill was read a first time in that House upon the following day ;¹¹ on December 8th, it was rejected by a majority of ninety-two,¹² and it was heard of no more.

These facts prove that it cannot be justly said that any attempt was made to rush the Bill through Parliament, unless we are to test the proceedings by some canon of Parliamentary procedure which aims at rendering all legislation impossible. The procedure was, according to the notions of those times, which may perhaps have

¹ Resolutions 7-11.

² Lords' Journals, vol. xxi. p. 90.

³ Ibid. p. 100.

⁴ Ibid. p. 102.

⁵ Ibid. p. 120.

⁶ Ibid. p. 123.

⁷ Ibid. p. 131.

⁸ Ibid. p. 160.

⁹ Ibid. p. 168.

¹⁰ Ibid. p. 170.

¹¹ Commons' Journals, vol. xix. p. 178.

¹² Ibid. p. 186.

been barbarous, conducted with the utmost deliberation and publicity. Mr. MacPherson, who has nothing but vituperation for the leaders of the Revolution, in order to justify the subsequent swamping of the House of Lords by Tory placemen under George III., a proceeding which he is pleased to dignify under the style of "a beneficent and patriotic achievement"¹ can see nothing in the Peerage Bill but a malign conspiracy on the part of the Whigs to render their ascendancy perpetual.² He overlooks the fact that the House of Commons, which rejected the Bill by so large a majority, was overwhelmingly Whig in complexion. He also neglects to point out that the resolutions and the Bill founded upon them were passed by the House of Lords, where parties were more evenly balanced, with practical unanimity, and they must therefore be taken as an expression of opinion common to both Whig and Tory Peers.³ Nor does Mr. MacPherson think it worth while to mention that the Act was passed at the time when the schism in the Whig ranks was at its height, when Sunderland and Stanhope were in power, and Walpole and Townshend were in opposition. Walpole wrote a pamphlet against the Bill, and was mainly instrumental in securing its rejection in the House of Commons.⁴ To omit any notice of such essential facts as these is to allow the stream of History to flow down the undefined channel of perverse imagination. A controversy in which Addison wrote on one side and Steele on the other can hardly have been purely partisan in its character.

¹ "The Baronage and the Senate," p. 54. ² *Ibid.* pp. 8, 53, 133.

³ "Parliamentary History," vol. vii. pp. 589-594, 606-627.

⁴ Lecky, "History of England," vol. i. p. 186.

The fact is that those who were more influenced by a sense of present inconveniences than by a consideration of future disadvantage were able to make out a plausible case in favour of the Bill. That case is very clearly stated in the ephemeral literature of the day. The number and character of the later creations has been already mentioned as a cause of complaint. But there were other and more serious grounds of objection to unlimited creation of peerages. The promise of a title was one of the many forms of corruption with which the Government of the day sapped the independence of members of the Lower House. Something had been done to prevent Government from exercising an undue influence over the Commons, but its power in that respect was far too strong, and it might reasonably be contended that the provisions of the Bill would remove one source of temptation. A still greater danger was anticipated from the fact that, although the Crown had lost the power of creating new boroughs for the return of members to the House of Commons, by an unlimited power to create Peers, it would be enabled to promote to the Upper House men who commanded the returns of close boroughs, and thus the House of Lords would practically become the arbiter of the political complexion of the Lower House. That this was no chimerical fear is proved by the fact that such a result was attained under the Tory Governments of George III., when a majority of the members of the House of Commons was returned by the influence of individuals, a large number of whom were Peers. No patriotic member of the Lower House could view such a consummation with anything but the gravest apprehension, and it would

have certainly been avoided if the Peerage Bill had been passed.¹

These were, among others, the main reasons which induced many persons of both parties to support the Bill. It is not pretended that there were not other and baser influences at work to procure its enactment, among which, no doubt, was the fear lest the Prince of Wales, who ostentatiously allied himself with the Opposition, should, on ascending the throne, give the Tory party a majority in the Upper House by fresh creations of Peers. This argument was not of sufficient weight to induce a sternly Whig House of Commons to pass the Bill; but enough has been said to show that it was possible for a man to accept the principle of the Bill without being a conspirator against the liberties of his country.

But although this may be admitted, there can be no doubt that the passing of the Bill would have proved a great constitutional disaster. The remedy for a method of creating new Peers which was liable to abuse was not necessarily the reduction of the opportunities of creation to a minimum; nor was the sacrifice by the House of Commons of all power to influence the House of Lords the sole preventive against the acquisition by the House of Lords of an undue influence over the House of Commons. Yet these two fallacies were assumed by the

¹ The arguments in favour of the Bill are clearly and moderately stated in a pamphlet entitled "Considerations Concerning the Nature and Consequences of the Bill now Depending in Parliament Relating to the Peerage of Great Britain. A Letter from one Member of the House of Commons to another." London, 1719. Probably by J. Richmond Webb, member for Ludgershall, and Lieutenant-Governor of the Isle of Wight. The case for the opposition may be found in "A letter to the Earl of Oxford concerning the Bill of Peerage. By Sir Richard Steele." London, 1719.

supporters of the Bill. If the Bill would have cured the evils which were at the time conspicuous, it would also have created others which would have proved still more dangerous. The House of Lords would have been changed into a close corporation, composed of members of certain select families. There would have been no effective check upon its actions: it would have been in a position to defy both Crown and Commons, and the constitution could only have been kept in working order by its voluntary self-effacement—a result which, in the circumstances, was not within the bounds of probability. The Peers would have been more than human if the practical inviolability of their order had not quickened them to assert privileges which would prove incompatible with prosperity and with freedom. Such a House as the Bill proposed to create, fenced off from all external influences, after a career of obstruction which would have imperilled the highest interests of the nation, must inevitably have been swept out of the path of progress by revolution.

The fault of Cromwell's reformed House of Lords lay, not in the attempt to bring it more into touch with the nation by the abolition of the hereditary element, but in the retention of the power of nomination in the hands of the chief magistrate, coupled with a too profuse introduction of new men into the chamber. The attempted self-reform of 1719 was vicious for precisely opposite reasons. It endeavoured to petrify the Upper House into a caste which should be practically impervious to new influences and new ideas. Both experiments failed, as they were bound, and deserved, to fail. Their history carries with it a moral and a warning.

CHAPTER VIII.

THE PACKING OF THE LORDS, AND THE IRISH UNION.

THE introduction and rejection of the Peerage Bill had one unfortunate consequence. It remained a standing advertisement to future sovereigns that even a Whig Parliament refused to limit the Royal prerogative to create Peers, and that lavish creation might be freely resorted to if the interests of the Court should appear to require it. The policy which lay at the root of the Bill was fairly adhered to by the Whig Governments under the first two Georges. At the death of George II. the total number of temporal Lords was only 174, of whom thirteen were minors, and twelve were Roman Catholics, and were therefore precluded from sitting in the House.¹ But with the accession of George III. a new era opened. The youthful monarch, who "gloried in the name of Briton," seemed from the outset determined to revert to the autocratic policy of the Stuarts, which his Hanoverian predecessors out of necessity, if not from choice, had abandoned. But the Jacobite faction was, at the period of his accession, a dwindling

¹ May, "Constitutional History," vol. i. p. 276.

and powerless minority. No immediate peril forced the young King to rely upon the advocates of the principles of the Revolution, and the political field lay open for his cherished experiments in personal government. But the House of Commons had achieved an amount of independence under the guidance of Walpole and his successors which rendered that experiment more dangerous than it had been for Charles II. Notably, the passing of the Place Bill, in 1743, which made a large number of holders of offices under the Crown ineligible for the House of Commons, seriously weakened one instrument of corrupt control over the representatives of the people which every Government had hitherto wielded;¹ and during the reign of George III. Lord Rockingham's Act, which excluded Government contractors from the House of Commons, freed its members from another form of temptation.² But the House of Lords, as a means of corruption, remained. Promises of peerages or of promotions in the peerage were freely made; and, especially under the Governments of Lord North and of the younger Pitt, titles were awarded to ambitious aspirants upon the sole ground that they could nominate the member for some rotten borough, and thus secure a seat for the Ministry. From 1761 to 1801 about 140 members were added to the House of Lords, exclusive of peerages granted to women and to princes of the blood.³ If the latter were included, it may be said that the numbers of the Peerage were nearly doubled during that period. Promotions were upon an equally lavish

¹ Lecky, "History of England," vol. i. p. 448, 15 Geo. II. c. 22.

² May, "Constitutional History," vol. i. p. 388.

³ Beatson's "Political Index," vol. i. pp. 133-152.

scale. Among so large a body of recruits it is inevitable that some men of conspicuous ability and attainments should appear, but a complete list of the ennobled shows many names which are names and nothing more. It will be found that these were the successful borough-mongers. Of these creations Lecky observes: "They were nearly all men of strong Tory opinions, promoted for political services; the vast majority of them were men of no real distinction, and they at once changed the political tendencies, and greatly lowered the intellectual level of the assembly to which they were raised."¹ This was the effect, as described by the most cautious of modern historians, of the packing of the House of Lords with Tory nominees, which Mr. MacPherson asks us to recognise as the great and salutary reform of a patriot King.²

The evils of this pernicious policy were not confined in their effects to "lowering the intellectual level" of the Upper Chamber. They necessarily tended to

¹ Lecky, "History of England," vol. v. p. 27: Pitt was perfectly aware of the impropriety of the course to which he was compelled by political exigencies. Writing to the Duke of Rutland, then Viceroy of Ireland, in 1786, he said: "I have no difficulty in stating fairly to you that a variety of circumstances has unavoidably led me to recommend a larger addition to the British Peerage than I like, *or I think quite creditable*." Stanhope, "Life of Pitt," vol. i. p. 307: "A variety of circumstances" led him to create forty-eight peerages during the first five years of his administration.

² Yet Pitt early foresaw the impending doom of the House of Lords. In 1783, in reply to the question, "In what part the British constitution might be first expected to decay?" he replied: "The part of our constitution which will first perish is the prerogative of the King and the authority of the House of Peers" (Stanhope, "Life of Pitt," vol. i. p. 133).

debase the character of the House of Commons. Never in the history of that House had the constituencies proved themselves so venal and so corrupt as they were during the period now under consideration. Boroughs were openly advertised for sale, and touts were employed to go about the country in search of possible purchasers. The system which allowed a majority of the members of the House to be returned upon the nomination of a few individuals, many of whom were Peers, and which permitted election petitions to be decided by the House of Commons, or by one of its committees, upon purely party considerations, encouraged such venality. No sense of the responsibilities of citizenship could develop in such circumstances. In a vast number of constituencies the elector was taught that his vote was worthless for the purpose of affecting the result of a general election as opposed to the enormous influence of aristocratic patronage; and that, unless it was cast with the majority, it would probably be lost through the action of a partial tribunal.

A large number of Pitt's later additions to the House of Lords were Irish Peers who were created for the purpose of facilitating the passing of the Act of Union, and in 1801 and the following years several Irish Lords were promoted to the House for their services in that respect. It is not the purpose of this investigation to discuss the merits of the policy of that act, but only to consider it so far as it affected the composition of the House of Lords.

Among the many forms of bribery which were unscrupulously used to bring about the desired result, promises of peerages and promotions in the peerage

take a high rank.¹ The correspondence of Lord Cornwallis during this period is an astonishing record of contemptible trafficking on the part of the negotiators on both sides ; the Irish leaders striving to obtain seats in the House of Lords as the price of their acquiescence,² and the representatives of Great Britain struggling to secure the necessary support without absolutely pledging the Crown to confer a peerage. It was not surprising that Pitt, who had already prostituted the Royal prerogative in this respect so freely, should be willing to pay this price for the purchase of adherents ; but it is evident that the King was at last alarmed at his Minister's profusion, and had demanded that the grants of peerages should be restricted as far as was compatible with the success of the Union. Hence the bitter outcry contained in the letters of Lord Cornwallis, and the miserable subterfuges to which the Government condescended in order to gain over opponents by promises worded so vaguely as to leave open a possible line of retreat. No wonder Lord Cornwallis exclaimed : " I despise and hate myself every hour for engaging in such

¹ " A more disgusting process than the transactions connected with the Irish Union could not well be " (Earl Russell, " *Recollections and Suggestions*," p. 338).

² Earl Stanhope gracefully admits this fact without stating it so baldly. " On the 7th of January we find the Earl of Ely, in a private letter, denounce ' this mad scheme,' for which, he says, he has not heard a single argument adduced. Yet, in the following year we find the scheme supported, not only by his lordship, but by his lordship's six members in the House of Commons. The result to his lordship was that on the passing of the Bill the noble earl received a marquissate, and also an English peerage " (" *Life of Pitt*," vol. iii. p. 168. See also Lecky, " *History of England*," vol. viii. p. 399, note 3).

dirty work.”¹ The dirty work was succeeded by dirtier, for after the Union had been carried, and nothing was to be gained by the Government of Great Britain by a fulfilment of its shameful pledges, many promises of peerages made by Lord Cornwallis under authority of Ministers were as shamefully repudiated.”² If Pitt’s previous creations of Peers of Great Britain “lowered the intellectual level” of the House of Lords, what shall be said of the moral debasement of that august assembly by the addition of men who, like Browning’s “Lost Leader,” could palter with what they had declared to be the dearest interests of their country for the sake of the “handful of silver,” or the “riband to stick in the coat”? What shall be said of the House which was thus “strengthened” by the inclusion of a batch of traitors and turncoats? All that can be urged in palliation of such political profligacy is that it was perpetrated at a time of universal political degradation, when the standard of honour and honesty was debased; when success was the hall-mark of respectability, and no impertinent inquiries were made into the methods by which that brand had been obtained.³

The resolutions in favour of the Union were carried in both the Houses of Parliament of Great Britain in 1799.⁴ When the Irish Parliament met the speech from

¹ Cornwallis’ “Correspondence” (Marquis Cornwallis to Major-General Ross), vol. iii. p. 102.

² *Ibid.* pp. 244, 251, 257, 262, 267.

³ See quotation from Pelham MSS. (Lecky, “History of England,” vol. viii. p. 363): “Let them (the Government) ballast the vessel steadily with gold, and hang abundance of coronets, ribbons, and mitres to the shrouds.”

⁴ Stanhope, “Life of Pitt,” vol. iii. p. 178.

the throne contained a vague and general allusion to the question. In spite of the strenuous efforts which had been made to influence members, the address in reply was only carried by a majority of two,¹ an amendment in favour of preserving the independent Legislature having been defeated by a majority of one.² A few days afterwards there was a rally of the Opposition, and upon report the obnoxious paragraph was expunged. During the remainder of the session and the following recess negotiations were entered into with the owners of pocket boroughs, with such effect that before the House met for the session of 1800 sixty-three seats had become vacant from one cause or another, chiefly on account of the "conversion" of the borough owners.³ Members who sat for such boroughs by the nomination of the proprietor were compelled to retire if they would not undertake to support the Union; and by these means, and by the direct bribery of members who sat by virtue of purchase or of election, a majority was finally secured.⁴

But no mention of the proposed Union was made in the speech from the throne on the opening of the new session, because the vacant seats were not yet filled up with adherents of that measure.⁵ Nevertheless Lord Castlereagh, in anticipation of that event, had the audacity to declare his belief that "Parliament and the country had changed their opinions upon the subject."⁶

¹ Irish Commons' Journals, vol. xviii. p. 11. ² Ibid. p. 13.

³ Lecky, "History of England," vol. viii. p. 402.

⁴ An ingenious attempt to defend the methods by which the Union was effected is made in the "History of the Irish Union," by J. B. Ingram.

⁵ Lecky, "History of England," vol. viii. p. 437.

⁶ Ibid. p. 438.

The Opposition, also desirous of anticipating the advent of the new members, moved an amendment to the address pledging the House to maintain "an independent resident Parliament." But the work of corruption had been performed too effectually, and the amendment was lost by a majority of forty-two.¹

Lord Castlereagh brought forward the Government proposals in the House of Commons on February 5th, and on the following day the House decided to go into committee upon them by a majority of forty-three.² Lord Clare, the Irish "father of the Union," introduced them in the House of Lords, in which only twenty-six members were found to oppose them. The proposals met with no further opposition in that House; the only point upon which any serious discussion took place was with reference to the status of Peers in the Union Houses of Parliament.³

The resolution in favour of the Union passed through committee in the Irish House of Commons on February 17th, the majority having by this time crept up to forty-six. From that date the Opposition made no organised attempt to defeat the scheme. Many of them held that as they opposed the principle of the Union, any endeavour to amend details would imply acquiescence. They confined their efforts to contending that the Union should not be finally agreed to before the opinion of the constituencies had been taken upon the subject. As the Parliament had been elected before the plan had been mooted, this demand had some colour of reason in it; but if it had been complied with, it is not

¹ Irish Commons' Journals, vol. xix. pp. 13, 14.

² Ibid. pp. 29-31. ³ Irish Lords' Journals, vol. viii. p. 337.

to be supposed that, in view of the enormous influence which the Government had acquired over corrupt members and the borough-mongers, the Union would have been defeated. The Government, however, were not disposed to sacrifice a present tactical advantage for the sake of a problematical electoral success; the motions in favour of an appeal to the people were defeated, and by March 28th the Articles of Union had passed both Houses of Parliament.¹ In the British Parliament the resolutions found less opposition. The Bill founded on the resolutions was rapidly passed through both the Irish and British Houses, and it received the Royal assent on July 2nd, 1800.²

The Articles of Union are extremely brief, considering the immense importance and the complexity of the subject with which they deal. There are eight articles, of which the fourth, which relates to the constitution of the United Parliament, is by far the longest. This article provides that Ireland shall be represented in the House of Commons by one hundred members, and by four Lords spiritual and twenty-eight Lords temporal in the Upper House. An Act passed by the Irish Parliament previous to the Union, and incorporated in the Act of Union, settled the manner in which these representatives were to be elected. With regard to the Lords spiritual it provided that one of the four Archbishops and three of the eighteen Bishops should sit, in an order named, by rotation of sessions. The Irish Church was represented thus in the House of Lords until January 1st, 1871, when, under the provisions of the

¹ Lecky, "History of England," vol. viii. p. 482.

² 39 and 40 Geo. III. c. 67. Lords' Journals, vol. xlii. p. 605.

Irish Church Act, 1869, the representation ceased.¹ The Lords temporal were, under the articles, to be elected for life by their brother Peers; and the Irish Act provided that they should be elected, in the first instance, by each duly qualified Lord elector handing in a list of the Peers for whom he voted. Those who obtained a majority of votes were duly elected, and were entitled to a writ of summons to the House of Lords for life. In the case of an equality of votes the question was to be decided by ballot. Every subsequent election to fill a vacancy caused by death or attainder is effected by a writ addressed to each Peer elector, accompanied by a voting paper, on which the elector writes the name of the Peer for whom he votes, and signs and seals the document.

The representative Peers for Ireland thus differed from those for Scotland, in that they sat for life instead of being elected for the duration of Parliament. But the difference of treatment extended much further than this. The Royal prerogative to create Peers was not abrogated, as was the case in Scotland; it was only limited. The Crown was authorised to create one new Irish peerage for every three which became extinct until the number of peerages was reduced to a hundred; at which number it might be maintained. This prerogative to create Irish peerages has been very sparingly used, and has of recent years fallen almost into desuetude. Another vital distinction between the Irish and the Scotch Peers was the liberty accorded to any Irish Peer to sit in the House of Commons for any constituency outside Ireland, provided that he had not been elected a representative Peer, and that, so long as he remained a

¹ 32 and 33 Vict. c. 42, s. 13.

member of the Lower House, he should neither be elected to, nor vote for members of the Upper.¹

This permission for Irish Peers to sit in the House of Commons was certainly a most striking innovation. Hitherto the theory of the constitution had been that a Peer was incapable of any interference in the elections to the popular chamber. The change was introduced to protect certain English members who had received Irish peerages ; but this, as Lord Mulgrave pointed out in his protest, "being a partial and temporary consideration, is not of sufficient weight to set aside ancient and important principles"² if those principles are worth retention. The proposal was hotly opposed by a small minority in the British House of Lords on the ground of the injury it would work in confusing the idea of the peerage, and destroying its dignity. Theoretically, there was much that might be alleged against it. It was an "in-and-out clause" of the most remarkable character. At one moment a man might be a Peer, and at another a Commoner. On one day he might be liable to be tried for an offence before the Lord High Steward, and on the next before a common jury. It is quite possible to understand that any one, jealous for the rights of the peerage, might see in such a change a shrewd thrust at the order, without falling so far into the vein of prophecy as to predict, like the then Lord Carnarvon, that it would result in the burial of "the constitutional Legislatures of both countries in one common grave."³ Such dire results are not brought about by the presence of a few Irish Peers in the House of Commons. The change has in fact, produced no practical effect upon the course of

¹ Art. 4.

² Lords' Journals, vol. xlii. p. 477.

³ *Ibid.*

politics ; it is interesting only as making one stage in the long process of disintegration to which the House of Lords is being subjected.

But, so far as Ireland was concerned, the provision was doubtless a disadvantage. The absentee landlord has always been her curse. Her wealthier sons needed no additional inducement to shake her dust from off their feet. By the Act of Union all those Peers whose opinions were not in accord with the majority were permanently excluded from taking part in public affairs in the House of Lords. On the other hand, a door was opened to them through the House of Commons provided they did not enter it as members for a constituency in their native country. Their ambition was only allowed free play on condition that they Anglicised themselves ; that they interested themselves in politics from the British standpoint, and made themselves the mouthpiece of British constituents. Such circumstances necessarily tended to estrange them from the land to which their prime duty was owing, and to draw them towards that which offered the fairer prospect of social advancement.¹

The retention of the power of the Crown to create fresh Irish peerages was a perfectly gratuitous anomaly. In the case of the Union with Scotland it had been suppressed in the hope that lapse of time would gradually merge the two peerages. This hope, owing to the Scotch rules of succession, has not been realised. It was necessary, in order to effect the Union with Ireland that

¹ A clause in the abortive Reform Bill of 1860 provided that Irish Peers might sit for Irish constituencies. Hansard, vol. clvi, c. 2076.

some representation should be granted to the existing Peers in consideration of their annihilation of themselves as an independent House, but to maintain the existence of such a body for the sole purpose of continuing a compromise the necessity for which has vanished was sheer perversity. These facts have been recognised in recent years : no Irish peerage has been conferred since 1868, and it is not probable that any more patents will ever be granted.

CHAPTER IX.

THE WENSLEYDALE PEERAGE.

SINCE the date of the Union the practice of profuse creation of Peers which commenced with the Stuarts, and became acute in the reign of George III., has not been abated, and the Upper House, including the elected Peers and the Lords spiritual, now numbers over 560 persons. With regard to the latter, one slight change has been made in the direction of limiting the number of spiritual Lords of Parliament. Until 1847 the episcopate had not been increased since the time of Henry VIII. Its numbers were not augmented by the creation of the Diocese of Ripon in 1837 because the Act which called it into being united the two bishoprics of Gloucester and Bristol.¹ But the Act of 1847,² which created the Diocese of Manchester, provided that the number of Lords spiritual in Parliament should not be increased—that the two Archbishops, and the Bishops of London, Durham, and Winchester, should always be summoned to the Upper House, and that when there was a vacancy in the number of the other Lords spiritual, the writ of summons should be issued to

¹ 6 and 7 Will. III. c. 77.

² 10 and 11 Vict. c. 108.

the Bishop who had not been previously entitled to sit.¹ The same provisions have been included in all subsequent Acts creating new bishoprics, and although in 1847 there was a great outcry on the part of ecclesiastics and the ecclesiastically-minded against the proposed limitation, it soon died away, and the arrangement has never since been called in question.

The only points in the history of the attempted reforms of the House of Lords which remain to be considered are the endeavour in 1856 to resuscitate the prerogative of the Crown to create life peerages, and the attempts in 1869 and 1888 to confer this prerogative to a limited extent by legislation. There can be no doubt that in ancient times the Crown possessed this prerogative. Lord Lyndhurst, the greatest opponent of the proposal, admitted it.² There is also no doubt that the prerogative had lain dormant for centuries, and that no precedent for the creation of a life peerage could be found later than the time of Henry VI. except those cases in which Charles II. and subsequent sovereigns had thus ennobled the mistresses whom they delighted to honour.³ The immediate cause of the discussion was the elevation of Sir James Parke to the dignity of Baron Wensleydale for the term of his natural life. There had been at that time great complaint of the dilatoriness and inefficiency of the House of Lords as the final court of appeal, on account of the age and infirmities of the law Lords.⁴ To

¹ Section 2.

² Hansard, vol. cxl. c. 267-8. See also "Dignity of a Peer," Third Rep. p. 37. *Contra*, Stubbs' "Constitutional History," vol. iii. p. 439.

³ Hansard, vol. cxl. c. 270-1.

May, "Constitutional History," vol. i. p. 290.

remedy this inconvenience the Government decided to raise Sir James Parke to the Upper House, and the patent was issued in the manner already described. As Sir James was a man well advanced in years, and had a wife living, but no son to succeed him, there was no special reason why the title should have been so limited. It was doubtless the intention of the Government to raise the whole question of life peerages, and Sir James consented to become the *corpus vile* upon which the experiment should be made. Previous Ministries had considered how the Upper Chamber could be strengthened by the addition of men of ability without of necessity conferring the right of membership on their descendants. The proposal to create life Peers had been mooted in 1815 after the conclusion of the great war, when it was desired to do honour to certain generals whose circumstances would not enable them to provide for the support of a hereditary peerage; but the subject was at that time dropped. The Government of Lord Liverpool appear to have come unanimously to the conclusion that it was expedient to create life Peers;¹ but Lord Liverpool subsequently changed his mind, and the attempt was never made. In 1851 an offer of a life peerage, as Lord Granville told the House, was made to a certain distinguished judge,² "but he had the weakness to shrink from being alone the first man to set the example."³ In the same year Lord Redesdale suggested that the holders of certain great judicial appointments should be members of the House of Lords during tenure of office, after the analogy of the Bishops. It is clear, therefore,

¹ May, "Constitutional History," vol. iii. p. 294.

² Dr. Lushington.

³ Hansard, vol. cxl. c. 282.

that the creation of the Barony of Wensleydale for life was not a mere freak, but an attempt to give expression to conclusions which had for a long time been forcing themselves upon the minds of public men.

The patent was dated January 16th, before Parliament had reassembled for the session. On January 31st, in the debate upon the Queen's speech, Lord Derby raised the question of its validity, which was afterwards so keenly debated.¹ He was doubtless right in saying that the matter was one of "the deepest consideration" for the Upper House, for it raised a question of privilege, which affected the supposed dignity of the noble Lords who were listening to his utterances, but the statement that it "especially affects the constitutional liberty of the country" seems to be a mere flight of oratory. The constitutional liberty of the country would have survived the shock produced by the creation of a life peerage without any perceptible detriment.

On February 7th the aged Lord Lyndhurst moved that the patent be referred to the Committee of Privileges, in a speech which excited the admiration of all parties by its brilliance and learning.² But in spite of his very forcible appeal to precedent and his somewhat too ingenious argument that life peerages were unconstitutional because Pitt and Grey did not resort to them in the emergencies created by the Act of Union and by the Reform Bill of 1832, it was clear from his opening sentence that it was the privileges of his order that he desired to defend, and that the question of public advantage held a subordinate place in his con-

¹ Hansard, vol. cxi. c. 37, 38.

² Ibid. c. 263.

sideration. He was replied to by Lord Granville on behalf of the Government, who traversed the arguments of Lord Lyndhurst with considerable ability. But a great majority of the Lords, including habitual supporters of the Government, held, with Lord Lyndhurst, that "the question is whether the ancient hereditary character of this House is to continue, or whether it is to be broken in upon and be remodelled to the extent and according to the discretion and interest of the Minister for the time being." The resolution was carried by a majority of 33 : contents, 138 ; not contents, 105.¹ Two proxies in favour of the majority arrived too late for use, and there were 32 pairs.

After the committee had sat for two days, had taken a certain amount of evidence, and had discussed the question, not without desultoriness and acrimony, Lord Glenelg moved that the question should be referred to the judges for their opinion.² This motion was very vigorously opposed on the ground that the judges were not the proper persons to decide questions of privilege ; and many musty precedents, derived from times when the judges were the creatures of the Crown, were cited in support of this contention.³ This motion was rejected by a majority of thirty-one.⁴ It is not straining probability too much to suppose that their Lordships were influenced by the fact that in 1782 the judges had unanimously declared illegal the resolution of the Peers that the Scotch pre-Union Peers were not entitled to sit in the Upper House when they were created Peers of Great Britain, and not by the servile declarations of

¹ Hansard, vol. cxl. c. 380.

² *Ibid.* c. 1121.

³ *Ibid.* c. 1134.

⁴ *Ibid.* c. 1150.

Chief Justice Fortescue, or of the judges in the time of Henry VIII., whose opinions had been cited.¹

The committee therefore continued its investigations unembarrassed by any opinion which the judges might have expressed; and on February 22nd Lord Lyndhurst moved to report that "neither the said letters patent, nor the said letters patent with the usual writ of summons issued in pursuance thereof, can entitle the grantee therein named to sit and vote in Parliament."²

That this was felt to be a very strong declaration for the House to make is proved by the fact that Earl Grey, who had expressed his disapproval of the Government's action, endeavoured to modify it by an amendment to the effect that, since precedents for life peerages had been produced, the Lords would not be justified in assuming the illegality of the patent in question or in refusing Lord Wensleydale his seat. He also gave notice that, in the event of his amendment being carried, he should move a series of resolutions declaring that it was inadvisable that the Crown should exercise any prerogative which could only be shown to have existed in remote periods without the consent of Parliament: that life peerages might be of advantage in some cases, but the practice of granting them would be liable to abuse except under regulations; and that the House should deliberate further upon what steps should be taken to prevent such abuse.

But these seeds of wisdom fell upon stony ground. It is not the practice of the House of Lords, when a moderate course is offered as an alternative to an

¹ See *ante*, p. 70.

² Hansard, vol. cxi. c. 1170.

extreme one, to choose the former. Lord Grey's amendment was defeated by a majority of 35, and Lord Lyndhurst's report was carried.¹ When the report came before the whole House on February 25th, Lord Granville at once announced that the Government did not intend to challenge a division, and it was agreed to *nem. con.*² Shortly afterwards Lord Wensleydale received a patent of peerage in the ordinary form.

It was unfortunate that the reins of Government should have been at this period in the hands of Lord Palmerston, who showed in this case as great a subservience to the House of Lords as he did in the matter of the Paper Duties. A leader who had been whole-hearted in the cause of reform would not have allowed the question to drop when it had once been raised. Had the Government decided to continue the fight they could have taken up a very strong position. The House of Lords had exceeded their constitutional powers in declaring the Wensleydale peerage patent invalid to confer the right to sit and vote in the Upper Chamber.³ They did not dispute the existence of the prerogative to create a life peerage, or that life Peers had, in ancient times, sat and voted in the House of Lords. But a prerogative of the Crown can only be limited by legislation, by the conjoint act of the Crown, the Lords, and the Com-

¹ Hansard, vol. cxi. c. 1216.

² Ibid. c. 1289.

³ "Little right as the House of Lords may intrinsically have to erect itself into a Court for trying and limiting the prerogative of the sovereign, their powers of obstruction and annoyance are so great that we do not doubt that they may virtually usurp a right which they cannot be shown legally to possess" (*The Times*, Feb. 20, 1856).

mons. The House of Lords, therefore, by their action, had usurped legislative functions. If that decision is to be regarded as constitutional, there is no reason why the Lords should not on some future occasion exclude Peers with hereditary grants on the ground that the Royal prerogative had been improperly exercised. If that be true, then there is nothing in the British constitution to prevent the Peers from converting themselves into a close corporation, and thus producing the evil results which would have been produced by the Peerage Bill of 1719 if it had passed into law. There can be no doubt that this element of danger lurks in the precedent thus set in 1856, and Lord Salisbury has recently declared that it would be within the competence of the House of Lords to exclude persons who were created hereditary Peers if in the opinion of that House they had been created with an improper motive, that is—for the purpose of passing a Bill which had been rejected by the Upper House. There is no suggestion in the debates of 1856 that such a power is inherent in the Lords' House. The ground of interference in the Wensleydale case was the non-hereditary character of the peerage granted. It is implied throughout the discussion that, if the peerage had been hereditary, the House would not have been competent to interfere. But the decision in the particular case is based upon a theory which is capable of far wider application. The question whether a prerogative has been exercised properly or improperly is a matter of opinion only. If the Lords are to be regarded as the sole arbiters of the propriety of the exercise of the prerogative so far as it affects their own House, then the one slight and ineffectual check upon their actions,

which the constitution has been supposed to provide, vanishes, and they remain an irresponsible chamber, which can be influenced or coerced only by agitation or revolution.

Two arguments were used against the Wensleydale Life Peerage which were manifestly disingenuous. It was urged that if the power of the Crown to create life Peers were recognised, it would facilitate the "swamping" of the House of Lords if the exigencies of a Ministry demanded it. Such a proceeding would not have been rendered easier in the least degree. The difficulty that stands in the way of a Minister who desires to force legislation upon an unwilling House of Lords is the power of the Crown to refuse compliance—a refusal which would probably be endorsed by the national sentiment if any attempt were made to use the prerogative for unconstitutional purposes. If the Crown objected to a wholesale creation of Peers solely upon the ground of the permanent addition that it would make to the House of Lords, it would be possible to overcome that scruple by raising to the peerage men who were childless, and the eldest sons of existing Peers—a course which was proposed at the time when the Lords threatened to throw out the Reform Bill of 1832. The independence of the House of Lords would not, therefore, have been more affected than it is at present if the power to create life Peers had been recognised.

The second fallacious argument was that it was unwise to revive a dormant prerogative, because a precedent would thus be created for the exercise of other ancient prerogatives of the Crown which might prove

dangerous to the liberties of the nation. The absurdity of this contention hardly needs exposure. Let us put it into more definite shape. "If," it is argued, "the Crown is permitted to exercise the prerogative of creating life Peers who can sit and vote in the House of Lords, it may, at some future time, on the strength of that exercise of a dormant prerogative, attempt to levy money without the consent of Parliament, or to exercise the prerogative of dispensation." The supposition does not stand in need of refutation. A prerogative which originally was exercised at the sole will of the sovereign and which threatened the liberties of the nation, had to be resisted by all means, even by force of arms if necessary; but the same prerogative may, under totally altered conditions, be exercised beneficially under the direction of the legally constituted advisers of the Crown, with the acquiescence of the whole people. Let us take an instance. The prerogative of the Crown to refuse the Royal assent to Bills has been in abeyance for nearly two hundred years,¹ and in all probability it will never be again exercised. But circumstances are conceivable, although not probable, in which that prerogative might be called into activity to give effect to the national will. Let the extreme case be imagined of the Legislature of a colony proposing to pass resolutions in favour of annexation to the United States of America. The Government of the day might deem it necessary to pass a Bill suspending the constitution of the recalcitrant colony. The Bill goes through the Commons and the Lords, but before the Royal assent has been given the mood of the colony has changed, and the resolutions

¹ Since 1707.

are defeated or withdrawn. In such a case the Royal assent to the Suspensory Bill would be refused upon the advice of the responsible Ministers of the Crown and with the hearty assent of the representatives of the people. And the extraordinary case having thus been dealt with by the exercise of the dormant prerogative, that prerogative would be laid once more to rest, and would become as antiquated as the weapons which adorn the walls of the Tower of London. These are not days in which any prerogative, dormant or otherwise, can be used in opposition to the will of the people. The power of the House of Commons is far too firmly established.

CHAPTER X.

EARL RUSSELL'S PROPOSED REFORM IN 1869.

AFTER the defeat of the attempt of the Government in 1856 to create life Peers by Royal prerogative, the Lords passed a Bill empowering the Crown to strengthen the legal element in the Upper House by the appointment of two law Lords who should sit for life only. This very moderate concession passed the second reading in the House of Commons, and was referred to a select committee, from which it never emerged.

The question was then allowed to rest until 1869, when it was raised again in a very modified form. In that year, when Mr. Gladstone's Irish Church Bill was under debate in the House of Commons, and when every one was wondering what the Lords would do with it, Earl Russell brought in a Bill dealing with the question of life peerages. Lord Russell was at that time an independent supporter of the Government, and, although the Ministry cordially approved the principle of the Bill, they considered it more politic that it should be brought in by a Peer who had no direct connection with them, and who, from his age and experience, was looked upon as an authoritative exponent of constitutional questions.

The proposals contained in Lord Russell's Bill, which was read a first time on April 9th, 1869,¹ were that the Crown should be authorised to create life Peers, provided that the number of such life Peers should not at any time exceed twenty-eight, and that not more than four should be created in any one year. These life Peers were to be selected from the six following categories :—

1. Scotch and Irish non-representative Peers.
2. Persons who have been members of House of Commons for ten years.
3. Officers in the army and navy.
4. Judges of England, Scotland, or Ireland, and certain other high legal officials.
5. Men distinguished in literature, science, and art.
6. Persons who have served the Crown with distinction for not less than five years.

Such was the very minute reform which Earl Russell placed before their Lordships for acceptance, and which John Bright forcibly stigmatised as "a childish tinkering of legislation." The reception of the "tinkering" in the Upper House augured well for its ultimate success. The Marquis of Salisbury, in a remarkable speech, declared that the Bill was "founded on a sound principle, and that if in any way it requires alteration, it ought to be rather in the way of extension" of the classes from which the life Peers were to be selected.² Lord Cairns, while mildly reproving Lord Salisbury for his too enthusiastic advocacy of the cause of reform, gave the Bill a regretful and qualified adherence ; and

¹ Hansard, vol. cxcv. c. 452.

² *Ibid.* c. 462.

Lord Granville supported the principle of the Bill on behalf of the Government. The first reading was passed without a division in a thin House, in the absence of that large number of Peers whose neglect of their duties is habitual.¹

The second reading was taken on April 27th,² and it was evident that, if the existence of the Bill was not yet threatened, the opposition to it had increased. Lord Cairns was more unfriendly, and Lords Malmesbury and Feversham sounded a note of hostility which subsequently proved fatal to the Bill.

The objections raised upon the first and second readings were chiefly to the categories. Certainly unless we are to view the Bill as an avowed piece of "tinkering," they are open to considerable objection. The admission of the Scotch and Irish non-representative Peers was intended to remedy the manifest injustice under which such of those Peers suffer who do not happen to hold the political views of the majority of their order, and who are, in consequence, permanently excluded from the Upper House. But this injustice, though harsh in its application to the individual, is, after all, individual merely, and the remedy is hardly one which appreciably affects the constitution of the Upper House, nor would it afford any considerable relief to the minority Lords of the two countries.

The admission of members of the House of Commons on the ground that they had served for ten years in that House was also open to criticism. Although the House of Commons forms an excellent training-ground for

¹ Hansard, vol. cxcv. c. 473.

² Ibid. c. 1648.

members of a second chamber, it is quite possible for a man to be a member of it for ten years without acquiring any of the qualifications which are essential for the office. The creation of such a category would have operated only to place at the disposal of Ministers another mode of consoling disappointed aspirants when the work of Cabinet-making is in progress.

There is little objection to the category of judges and high legal officials of Great Britain and Ireland. The men who are engaged in the administration of law are especially competent to aid in its formation. But it is a remarkable fact that the lawyers who had achieved the dignity of a hereditary peerage, in 1869, as in 1856, were far more vehement in their opposition to the proposed changes than any other class of Peers. This may be explained by the fact that barristers are, throughout their lives, in everything that concerns their profession, under the domination of a narrow autocracy, and they submit without a murmur to have their affairs managed by a co-optative executive. Hence their life training imbues them with oligarchical opinions, and when they become great luminaries they are unwilling that lesser lights should move in the same orbit, even with a modified splendour.

The two categories of naval and military officers and of persons distinguished in literature, science, and art, call for no very special remark. The introduction of them into the Bill emphasises that ineradicable confusion between the ideas of an honour and an office which exists with regard to the peerage. An honour might well be conferred upon such persons, but not such an honour as involves the exercise of legislative functions.

The military and naval professions are so largely adopted by members of the aristocracy, that they are always fully represented by members of the hereditary peerage. There was no need to propose an increase in that class merely for the purpose of strengthening the legislative capacity of the House of Lords; although in any scheme of reconstruction it would be necessary to provide for the representation of the services. Men who devote themselves to literature, science, and art have rarely any aptitude for the work of legislation or any leisure to devote to it. The nation would hardly be the gainer if Sir Frederic Leighton, Mr. Swinburne, or Professor Tyndall were engaged in swelling the pages of *Hansard* instead of pursuing those avocations in which they have earned renown. Let us honour them by all means, but not in a manner which will curtail those services which are their true titles to honour.

The sixth category, which would have included persons who had served the Crown with distinction at home or abroad for five years, although somewhat in the nature of a cross division, was based upon a truer conception of the character of the reform which is needed. It would have afforded a means of delocalising the House of Lords to a slight extent, and of importing into it a leaven from India and the colonies with salutary results. It was objected that the category would give rise to invidious comment; that queries would be bandied as to the qualifications of the selected individuals. But this is a drawback which attends the conferring of any distinction under the sun. The public and the press will always debate the merits of the fortunate recipient.

Such are the objections to the categories, some of which were urged during the second reading debate. Lord Russell recognised that they affected adversely the prospects of the Bill, and he agreed to withdraw the categories ; but he refused to accept Lord Derby's proposal that the service for which the life peerage was conferred, and the inability of the recipient to accept a hereditary peerage for financial reasons, should be recited in the patent.¹ It is hard to suppose that Lord Derby really intended the amendment as an improvement of the Bill ; it is probably an early example of the now common practice of proposing an alteration "to make the Bill more detestable." The second reading was agreed to, and the Bill was referred to a committee of the whole House.² In spite of Lord Russell's concession, the opposition to the Bill grew stronger, and the hostility of Lord Cairns became more pronounced. He moved amendments which provided that there should be no limit to the number of life Peers, but that no more than one such life Peer should be created in any year, except in the case of a Cabinet Minister or of a distinguished naval or military officer whom it was desirable to honour ; in which case a second life Peer might be created.³ This proposal, although it has the appearance of a desire to enlarge the scope of the Bill, was in reality an attempt to limit its operation. Persons who are qualified for promotion to the House of Lords on account of services performed are usually of advanced age. It is not probable that the average duration of life peerages would exceed ten years. An extra pro-

¹ Hansard, vol. cxcv. c. 1661.

² Ibid. c. 1677.

³ Ibid. vol. cxcvi. c. 1176.

motion under the special clause every other year would not in all probability be exceeded. Under Lord Cairns' amendment, therefore, the largest number of life Peers existing at any one time would have been about fifteen. Lord Russell did not accept the amendment, but he compromised the question by reducing the rate at which life peerages might be created to the rate of two a year.¹

But this concession did not satisfy Lord Cairns, who from that date became an uncompromising opponent of the Bill. When the third reading came on, Lord Malmesbury moved its rejection, and it was defeated by 106 to 76.²

Thus ended the second attempt to introduce life Peers into the House of Lords with a view to vitalising it with new elements. For the purpose of improving the House as a final court of appeal, provision was made by the Appellate Jurisdiction Act, 1876,³ for the immediate appointment of two Lords-in-ordinary and the future appointment of two more.⁴ These Lords were to sit and vote in the House so long as they held their appointments, but a subsequent Act passed in 1887⁵ provided that they should remain members for life, notwithstanding resignation of office. There are at present six life Peers sitting by virtue of these Acts.

The attempt to create life Peers by the exercise of the Royal prerogative in 1856, and the proposal to permit the creation of a limited number of such Peers by statute in 1869, are the only serious endeavours which

¹ Hansard, vol. cxcvi. c. 1204. ² Ibid. vol. cxcvii. c. 1387-1402.

³ 39 and 40 Vict. c. 59, s. 6.

⁴ Section 14.

⁵ 50 and 51 Vict. c. 70, s. 2.

have been made to reform the House of Lords in modern times. The fiasco of Lord Salisbury in 1888 cannot be credited with seriousness, as a subsequent chapter will show. The timid proposal of Lord Russell was so singularly insufficient that it is hardly worth prolonged consideration, except as an illustration of the hopelessness of any expectation that the House of Lords will willingly adapt itself to the altered needs of the nation. Those who supported the Bill evidently considered that they were proposing a magnificent concession to the popular demand for reform. Lord Salisbury declared that the Bill would "tend to meet all the large advances of democracy as the third power of the state, as we must meet those advances by making this House strong in the support of public opinion, strong in its influence in the country, and strong in the character and ability of those who compose it."¹ It needs an acute observer to detect when Lord Salisbury's oratory is ironical and when it is an endeavour to express a genuine opinion; but, assuming that these words were intended to be a temperate expression of his convictions, the conclusion is inevitable that the general opinion with regard to reform of the House of Lords has advanced rapidly since 1869. Certainly no one who has given the subject consideration would be content with the meagre change which was then proposed by Lord Russell, and was eulogised by Lord Salisbury in the words just quoted. And, indeed, Lord Salisbury's conception of the scope of the necessary reform, as he expressed it in his speech, seems to have been very

¹ Hansard, vol. cxcv. c. 464.

inadequately covered by the defeated Bill. His words are so remarkable that they are worth bearing in mind in relation to this question. "We belong," he said, "too much to one class, and the consequence is that, with respect to a large number of questions, we are all of one mind. Now that is a fact which appears to me to be injurious to the character of the House as a political assembly in two ways. The House of Lords, though not an elective, is strictly a representative assembly, and it does in fact represent very large classes in the country. But if you wish this representation to be effective you must take care that it is sufficiently wide, and it is undoubtedly true that, for one reason or another, those classes whose wealth and power depend on commerce and mercantile industry do not find their representation in this House so large or so adequate as do those whose wealth and power depend upon the agricultural interest and landed property. . . . We want, if possible, more representations of divers views, more antagonism. There are a vast number of social questions, deeply interesting to the people of this country, especially having reference to the health and moral condition of the people, and upon which many members of your Lordship's House are capable of throwing great light, and yet these subjects are not closely investigated here because the fighting power is wanting, and the debates cannot be sustained."¹

No avowed enemy of the House of Lords has ever so cynically and so powerfully displayed the cause and the effect of its present moribund condition. An assembly

¹ Hansard, vol. cxcv. c. 463.

which has sprung out of conditions which have long ago ceased to exist, and which represents only a few of the many and complicated interests which constitute the national life, attempts to dictate what measures shall or shall not be adopted for the benefit of the community. With regard to a large class of questions its members are "all of one mind." But with regard to another, "social questions — having reference to the health and moral condition of the people," they are so apathetic that, although many of the members "are capable of throwing great light" upon them, "the debates cannot be sustained." A truly grave confession of incompetence, revealing a malady not to be cured by the creation of twenty-eight life Peers during a period of seven years.

But though the failure of the Bill of 1869 need cause no regret, it is impossible for those who believe that the reform of an ancient institution is best and most effectually carried out by gradual change, not to deplore the failure of the attempt to create life Peers in 1856. If that effort had been successful, if life Peers had succeeded in asserting their right to sit and vote in the House of Lords, a constitutional means of converting that House from an effete baronage into a modern senate would have been legally established. The modern tendency to select for peerages men who have no heirs indicates that these life peerages would have found favour. The custom of offering and accepting a life peerage would gradually have grown up: the hereditary peerage would have been conferred more and more sparingly: men would have become accustomed to the idea that legislative functions descending to heirs

were an anachronism, and at last they would have been granted no longer. The change would have worked itself out slowly, it is true, but none the less effectually. As the hereditary peerages became extinct, the last holder would have been replaced by a life member, and a salutary reform of the first order would have been effected in silence, and by the efflux of time, without infringing rights or offending prejudices, which will not now be attained without conflict and commotion.

"The House of Lords," wrote the late Walter Bagehot, "rejected the inestimable, the unprecedented opportunity of being tacitly reformed. Such a chance does not come twice. The very element which was wanted to the House of Lords was, as it were by a constitutional providence offered to the House of Lords, and they refused it. By what species of effort that error can be repaired I cannot tell ; but unless it be repaired, the intellectual capacity can never be what it would have been ; will never be what it ought to be ; will never be sufficient for its work." ¹

¹ Bagehot, "The English Constitution," p. 124.

CHAPTER XI.

LORD ROSEBURY'S MOTIONS AND LORD SALISBURY'S FIASCO.

LORD SALISBURY, and many other noble Lords, are never tired of boasting that the House of Lords is a more business-like body than the House of Commons. The methods of the Upper House in dealing with the question of internal reform hardly support this contention. Although in 1856, and in 1869, a large number of Peers declared their belief that the creation of a certain number of life Peers was not only desirable but necessary, down to the present time the House has merely amused itself by debating the subject in a half-hearted manner, and has never been able to agree to the introduction of this very small instalment of reform. The managers of a commercial enterprise who, after becoming convinced that a reorganisation of the firm was essential, should wait for forty years or so without giving effect to their convictions, could hardly hope to command either success or respect; and a legislative body which proves itself equally dilatory must expect to fall under the same condemnation.

It is the purpose of this chapter to recount the last futile efforts of the House of Lords in the direction of

self-reform. They are interesting not only as an illustration of the incapacity which they reveal, but also for the proof which they afford of the progress which has been made of recent years in the popular demand for reconstruction. It may be received as an axiom that the Lords will never consent to grant more than the minimum of concession which will satisfy the public requirement. When, therefore, they are found entertaining even so much as a proposal for increased reform it is certain evidence that the feeling outside in favour of change is growing.

On the 20th of June, 1884, Lord Rosebery moved a resolution "that a select committee be appointed to consider the best means of promoting the efficiency of this House."¹ The motion being thus general in its terms, Lord Rosebery purposely avoided laying any specific scheme of reform before the House. He declared that his proposal was conservative in its essence, and he endeavoured to disarm opposition by assuring his hearers that it was "little more than a request for a coat of new paint." He pointed out that the House of Lords had remained practically stationary in its constitution, while all the other institutions of the country—Monarchy, Commons, Church, Municipalities—had undergone change. "Of course," he urged, "it may be said that this is due to its inherent and original perfection, but I do not believe that there is any institution that can afford to remain motionless and seal itself against the varying influences of the time."

Lord Rosebery then proceeded in a vein of jocular

¹ Hansard, vol. cclxxxix. c. 937.

to inquire why it was that the decisions of the House of Lords did not "command the respect and carry the weight which they deserve," and why "we have no Bills introduced into this House except Bills of such a lofty morality that they cannot be presented point blank to the coarser palate of the House of Commons"? The answer he found in the fact that the House contains members of one class chiefly, and he proceeded to enumerate the various interests which, in his opinion, were insufficiently represented, or not represented at all. These he classified in nine categories as follows :—

1. Dissenters.
2. Medicine.
3. Science.
4. Literature.
5. Commerce.
6. Tenants of land.
7. Arts.
8. Colonies.
9. Labouring classes. ¹

Thus, although Lord Rosebery disclaimed all intention of formulating a scheme of reform, he indicated with some clearness the direction in which he thought that expansion should take place. A comparison of these categories with those contained in the Bill brought forward by Lord John Russell in 1869 shows that a considerable advance in opinion had taken place in the interval. This is conspicuously the case in regard to the last category, concerning which Lord

¹ Hansard, vol. cclxxxix. c. 945 *et seq.*

Rosebery boldly said : " I believe one reason of our relative weakness, when compared with the House of Commons, is that we have no representatives of the labouring classes." ¹ What the effect of such an announcement would have been in 1869 is fearful to contemplate ; and even in 1884 this laying of profane hands upon the sacred ark of the constitution seems only to have been met with horrified silence.

As to the methods by which the expansion should be effected, Lord Rosebery indicated a preference for the creation of life Peers, and suggested that the ancient system of " assistants," by which the judges were called into council, might be revived. The motion was seconded by Earl Onslow, who hinted that it would be an advantage if Peers were capable of resigning their functions as legislators.

The attitude of Lord Salisbury towards the proposal was by no means so friendly as it had been in 1869. Although he professed to be still in favour of a limited creation of life Peers—a profession which his subsequent action as Prime Minister went far to falsify—he opposed the motion on the ground that it was not a fit question to refer to a committee, and that the change, if it was to be made at all, should be made by Bill brought in by Government.² He was evidently of Carlyle's opinion, that Englishmen are " mostly fools," for he had the hardihood to explain the unpopularity of the House of Lords by asserting that " we, unfortunately, have a tendency to taciturnity in this House which exposes the nakedness of our programme. If we

¹ Hansard, vol. cclxxxix. c. 948.

² Ibid. c. 964.

only talked as much as the House of Commons, everybody would think that we were just as active as they in effecting legislation." ¹ The admission of the sterility of the House of Lords for the purpose of flouting the House of Commons is interesting and characteristic. Holding such an opinion as this, it is surprising that Lord Salisbury should have approved of a policy in the present Parliament which must, according to his theory, convince the country that the existing House of Commons is the most "active" in legislation which the present century has produced.

Lord Granville, in order to give definite shape to the motion, proposed to add the words, "by life peerages or otherwise," and Lord Rosebery was willing to accept the amendment; but it was defeated by a majority of 42, and the original motion was lost by 39, in a House composed of 115 members.²

Lord Rosebery did not renew his proposals for reform until 1888. In the interim he had been Foreign Secretary in Mr. Gladstone's Governments, and he had seen the contemptuous rejection and subsequent acceptance of the Franchise Bill by the House of Lords at the instance of Lord Salisbury. He had also witnessed the agitation against that House which had disturbed the country during the period between such rejection and acceptance, and he had evidently come to the conclusion, not only that the divisions of the House "represent rather the passions of a party or a class than the deliberate reasoning of a senate," but also that Lord Salisbury was a dangerous leader

¹ Hansard, vol. cclxxxix. c. 966.

² Ibid. c. 973.

to be placed in command of a body so easily influenced for evil. "I hope the noble marquis will excuse me when I say that he is a little impetuous in the use of the weapon committed to his charge. He never likes to keep his sword in its sheath. He is always trying its temper. If he is not hacking about and dealing destruction and death with it, he is always flourishing and threatening with it."¹

Lord Rosebery now modified his resolution to meet certain objections which had been urged in 1884, and he moved that "a select committee be appointed to inquire into the constitution of this House."² To this motion the Earl of Wemyss moved an amendment which had for its object a declaration that any proposal for reform should come from the responsible Ministers of the Crown.³ In his speech Lord Rosebery abandoned the jocular strain of his earlier effort, and spoke in a tone of serious warning of the consequences which were likely to ensue from a persistent disregard of all demands for reform. He pointed out that the Franchise and Redistribution Acts had very greatly increased the strength of the House of Commons, and that the "incompatibility of temper" between the two Houses was daily increasing, and not unlikely to increase, "and threatens to become a gulf yawning and impassable." "The House of Commons," he said, "rests upon the votes of some 6,000,000 persons. What we represent is not so easy to divine."⁴ In such circumstances it was impossible for the House of Lords to base its claim to power upon tradition, descent, or

¹ Hansard, vol. cccxxiii. c. 1561.

² Ibid. c. 1548.

³ Ibid. c. 1576.

⁴ Ibid. c. 1555.

even genius. "What is required is the broad basis of popular support." And Lord Rosebery attributed its lack of this support to the "indiscriminate and untempered heredity" of the House, and to the fact that its veto was, in reality the veto of one man—the leader of the Tory party. From this followed the disastrous consequence, that "in great constitutional questions where the House of Lords is pitted against the House of Commons, the question very soon ceases to be the question placed before the country, and the country takes up, not the question before it, but the problem of the reform of this House; and even those electors who approve the general policy of this House do not like to see the action of their representatives set at naught."¹

To remove these sources of weakness, and in order to make room for new blood, as well as to keep the House moderate in size, and to exclude unworthy Peers, Lord Rosebery proposed that the whole body of English, Irish, and Scotch Peers, except Peers of the blood royal, should elect a certain number of representatives by a system of minority voting, such elected Peers to sit for a certain defined period. The vacancies so created he reserved to provide the "outward buttress" of the House of Lords²—the element representative of the nation. These were to consist of members elected by County Councils, the larger municipalities, and possibly by the House of Commons. To these were to be added a certain member of life and official Peers, and the Agents-General of the

¹ Hansard, vol. cccxxiii. c. 1556.

Ibid. c. 1570.

Colonies. Any Peer was to be at liberty to accept or refuse a writ of summons to the Upper House, and if he refused he was to be eligible for the Lower. Under certain conditions the two Houses were to meet as one body, and accept or reject disputed measures by fixed majorities.

Such were the more definite and more radical proposals which Lord Rosebery laid before the House in 1888, and they certainly involved very vital changes. It was a sweeping reform, not a "coat of fresh paint" merely. Lord Salisbury opposed the motion, at the same time declaring that he held to his former opinion that the creation of a limited number of life Peers would be an advantage.¹ But he, at the same time, declared that "no second chamber is likely to answer so well in the long run as a second chamber based upon the hereditary principle." Lord Salisbury was evidently losing faith in even the small instalment of reform which he had formerly advocated, just as Pitt lost faith in the reform of the House of Commons, and probably for the same reason. Since 1869 Lord Salisbury had become First Minister of the Crown, and leader of the House of Lords. He perceived that the Upper Chamber was, in its present condition, a more pliant tool in his hands than it would be if it were made to reflect more accurately the national sentiment. He warned the House that "you are treading on very dangerous ground, you are touching weapons of a terribly keen edge when you undertake to reconstruct the ancient assemblage to which we

¹ Hansard, vol. cccxxiii. c. 1590.

belong.”¹ The motion and amendment were therefore negatived.² Lord Salisbury, while subsequently opposing a Bill brought in by Lord Dunraven for the reform of the House of Lords, undertook that his Government would deal with the subject.

In fulfilment of this promise the Prime Minister, on June 18th, 1888, introduced two Bills, one for the creation of life Peers and the other for the exclusion of “Black Sheep.”³ The latter purpose was to be effected by an address of the House of Lords to the Crown, praying that the writ of the offending member might be withheld. The former Bill was practically upon the lines of the Bill of 1869, with very slight alterations in the direction of expansion. It proposed to limit the number of life Peers to fifty, and not more than five were to be created in any one year. Of these not more than three were to be created from the following categories:—

1. The judges of superior courts in the United Kingdom.
2. Naval officers of rank not lower than Rear-Admiral.
3. Military officers of rank not lower than Major-General.
4. Ambassadors.
5. Civil servants who have been made Privy Councillors.
6. Governors or Governors-General of Colonies or Lieutenant-Governors of India who have served for five years.

¹ Hansard, vol. cccxxiii. c. 1598.

² Ibid. c. 1605.

³ Ibid. vol. cccxxvii. c. 387.

In addition, not more than two life peerages might be granted to persons not coming within any of the above categories, after the Crown had notified to the House of Lords by message the intention to create and the nature of the qualification.¹

These proposals did not constitute any coherent plan of reform. They afforded only one more instance of the futility of the "tinkering" process. The fact that the categories are no improvement upon those of 1869 must be apparent. Although Lord Salisbury's chief argument in that year was that in the House of Lords social questions "having reference to the health and moral condition of the people" were inadequately discussed, "because the fighting power was wanting," he did not attempt to remedy that defect. When he had to propose legislation upon the subject, his categories all related to official persons who at present find more than adequate representation. The proposal in no way met, or attempted in the slightest degree to meet, the demand which had been formulated by Lord Rosebery; and it is not to be wondered that Lord Rosebery exclaimed that, "looking at the proposals of the Bill, one begins to feel that the subject is hopeless, and that it is hardly worth while proceeding with a reform of that character." But although Lord Rosebery thus strongly expressed disgust and disappointment, he nevertheless declared that he would vote for the Bill on the ground that "when you once open the sluice-gates of Reform into this House, you will not be able to stop at this limited measure."²

¹ Hansard, vol. cccxxvii. c. 391-2.

² Ibid. c. 397.

The very insufficiency of the proposal was its recommendation to the Peers, although doubtless the great majority of them disliked it in their hearts. But when the Tory leader of the House of Lords, at the head of a powerful Tory Government, proposes "a coat of fresh paint," even of the thinnest and least durable description, it only remains for the rank and file to bow their heads and submit to the operation with such signs of enthusiasm as they are capable of simulating. The Bill was read a first time without a division, and the second reading was taken on July 10th.¹

"And then a wonder came to light, which showed——" something which is best left to inference. After a discursive debate, in which various Lords rung the changes of faint praise of the Bill in tones which suggested that they found themselves in the same predicament as Balaam on a certain memorable occasion, a rumour spread about that the Bill had actually been "massacred" in the House of Commons. At last Lord Salisbury rose and admitted the fact, attributing this result to the bitterly hostile attitude of Mr. Gladstone. He announced that his "right honourable friend,"² under the influence of panic, which in the face of such terrible threats was not unnatural, has undertaken to abandon the Bill."³ This Bill, and that for the exclusion of "Black Sheep," were therefore read a second time and withdrawn. The situation was dramatic, and had probably been rehearsed. The coincidence of terrified Mr. Smith in the House of Commons abandoning a Bill which his chief was advocating in the House of Lords is too curiously accidental

¹ Hansard, vol. cccxxviii. c. 852.

² Mr. W. H. Smith.

³ Hansard, vol. cccxxviii. c. 871.

not to arouse suspicions of design. It was an ingenious method of getting rid of a Bill to which a Parliamentary majority was pledged, but which that Parliamentary majority abhorred. Mr. Smith's simulation of panic, however, was painfully inartistic. It took the form of a statement that Mr. Gladstone's request was "a very reasonable request, and . . . I cannot have the slightest hesitation in giving him the assurance which he desires, that no attempt should be made in the course of this year to ask the House to consider such a measure."¹

The conclusion that this proceeding was a manœuvre to get rid of the Bill is strengthened by a conversation which took place in the House of Lords at the commencement of the session of 1889. Lord Carnarvon inquired whether the "Black Sheep" Bill would be proceeded with. Incidentally he alluded to the Life Peers Bill and its strange disappearance; describing how "the House broke up. There was a dissolving view, and the Bills themselves quietly vanished from sight." Lord Carnarvon hinted pretty broadly that Lord Salisbury was not enamoured of his own production, and was not sorry to see the dissolving view take place. He further declared that he had no intention of disturbing the ashes of the deceased Bill for the creation of life Peers, but he desired that the "Suspension of Writs" Bill should proceed. Lord Salisbury, in reply, laid all the blame for the failure upon the shoulders of Mr. Gladstone, and declined to reintroduce either of his Bills.²

And so the matter rests. The conclusion to be drawn from the history of attempted reform from 1856 to the

¹ Hansard, vol. cccxxviii. c. 912.

² Ibid. vol. cccxxxi. c. 551.

present time is either that the Lords do not desire reform, or, desiring it, are incapable of effecting it. When they express a wish for a change in their constitution, it is only as a protection, lest a worse thing happen unto them. They are ready to clutch at any excuse to avoid passing even so small and ineffective a measure as that proposed by Lord Salisbury. The history of this movement is so barren of instruction, except so far as it affords a further illustration of the incapacity or unwillingness of the House to deal with the subject even inefficiently, that it would not have been worth so detailed a consideration had it not been necessary to prove how useless it is to look for the solution of this great problem to the "most business-like and intelligent assembly in the world."¹

¹ The only reforms to which the Lords have assented are the abolition of voting by proxy in 1868 and the suspension of members during bankruptcy in 1871. Those who desire further illustrations of the incompetence of the Lords in this respect should read the story of Lord Dunraven's abortive House of Lords (Constitution) Bill, 1888 (Hansard, vol. 325, c. 518), and of Lord Carnarvon's equally abortive Discontinuance of Writs Bill, 1889 (Hansard, vol. 334, c. 333).

THE METHODS OF THE LORDS.

CHAPTER XII.

THE STRUGGLE FOR REFORM.

IN the foregoing sketch of the rise and growth of the House of Lords the history of the great battle which raged around the Reform Bill of 1832 has been omitted. This phase of the question has been purposely passed over because it more properly belongs to the third rather than to the second section of this inquiry. When the question whether the House of Lords has hindered or aided legislative progress is considered, the subject limits itself to the period subsequent to the passing of the Reform Act, and the history of that Act throws considerable light upon it. Before 1832 the Lords came frequently into collision with the Commons, but the causes of dispute were mainly questions of privilege, not questions of legislation. The two Houses fought with virulence upon such subjects as the original jurisdiction of the Upper House, or the right of that House to amend money Bills, but upon questions of substantive legislation they were rarely in disaccord.¹ This fact

¹ The exceptions generally admit of some explanation. Thus Pitt's Public Offices Bill of 1783 was rejected by the Lords at the instance of the Coalition Government, who dared not oppose it in the Commons. Fox's India Bill was rejected at the dictation

is by no means surprising when the composition of the House of Commons is considered. Those members of that House who were returned by genuine election were chosen almost entirely by a limited electorate in which the landed interest largely preponderated. A few places, such as Preston, elected their representatives upon a franchise which practically amounted to manhood suffrage; but such cases were so rare that they did not affect the general result. The expense of contesting an election in those days was so enormous that it could only be undertaken by men of great wealth. It is asserted that an election for the county of Yorkshire has been known to cost the candidate about £150,000.¹ These two circumstances threw the representation of the counties very largely into the hands of the wealthier aristocratic families.

But it was in the small boroughs that the aristocracy obtained their paramount influence over the composition of the House of Commons. It was stated in a petition from "The Friends of the People," presented to the House by Mr. Grey in 1793, that in England alone at least 157 members were nominated by 84 persons, 40 of whom were Peers, and that 150 more were returned by the influence of "seventy powerful individuals."² Thus 307 members were returned as the representatives of 154 persons. Dr. Oldfield, in 1816, dealing with

of the Crown. Wilberforce's Bill for improving county elections was rejected upon grounds similar to those upon which the Reform Bill was afterwards rejected.

¹ Hansard, vol. ii. Third Series, c. 1074. This is probably an exaggeration. The expenses of Wilberforce in 1784 amounted to £18,662. Stanhope, "Life of Pitt," vol. i. p. 206.

² „, Parliamentary History," vol. xxx. pp. 795, 797.

the whole of the United Kingdom, placed the matter in a worse light. He showed that no less than 471 members out of a House numbering 658 were returned by 267 persons, 144 of whom were Peers.¹ In days when the principle of "one man one vote" is considered reasonable, it is difficult to conceive that, not a hundred years ago, "one man two representatives" was deemed a satisfactory basis for constitutional Government.²

When Lord John Russell introduced the first Reform Bill in 1831 he read out a list of 206 boroughs in England and Wales with electorates varying from 5 at Gatton to 955 at Sandwich, all of which were subject to undue influence in the election of their representatives.³ Of these boroughs the Peers directly controlled 61, and wealthy Commoners and direct purchase controlled the remainder. Nor did such a system as this appear anomalous or objectionable to a large number of persons who must nevertheless be credited with sanity. Sir Robert Inglis, who was the first speaker against the first reading of the Bill, quoted with approbation the dictum that the posterity of Mr. Pitt, the

¹ Sixteen other members were returned by Government influence, leaving 171 independent of nomination (Oldfield, "Representative History," vol. vi. pp. 285-300).

² Pitt has placed on record an interesting illustration of the position of a member for a close borough. Writing to his mother about the proposal of Sir James Lowther to return him as member for Appleby, he says, "No kind of condition was mentioned, but that if ever our lines of conduct should become opposite I should give him an opportunity of choosing another person. *On such liberal terms* I could not hesitate to accept the proposal" (Stanhope, "Life of Pitt," vol. i. p. 47).

³ Molesworth, "History of England," vol. i. pp. 71 *et seq.*

purchaser of the borough of Old Sarum, "now have a hereditary right to sit in the House of Commons as owners of it, as the Earls of Arundel have to sit in the House of Peers as Lords of Arundel Castle."¹ If such views of the constitution were to prevail the House of Commons was within a measurable distance of becoming as much a hereditary chamber as the House of Lords. It was of such a system of "representation" that the Duke of Wellington found it possible to say that "he had never read or heard of any measure up to the present moment which could in any degree satisfy his mind that the state of the representation could be improved or be rendered more satisfactory to the country at large than at the present moment."²

It was not to be expected that a Lower House, thus dominated by the second chamber, thus permeated with the influence of the aristocracy, would frequently initiate any legislation upon questions of social importance which were likely to prove displeasing to the House of Lords.³ The quarrels of the two Houses were upon questions of privilege chiefly, concerning which the interest of the outside public was inconsiderable. With regard to questions of legislation in the interests of the people the two Houses were, in consequence of their constitution, in practical harmony. If the reader, even though unlearned in the law, will take the trouble to glance through the chronological tables of the Revised Statutes, he will soon discover for himself that the whole of the legislation which has exercised a beneficial and

¹ Hansard, vol. ii. Third Series, c. 1102.

² Ibid. vol. i. Third Series, c. 52.

³ Catholic emancipation must be mentioned as an exception.

ameliorating influence upon the condition of the people is the work of reformed Parliaments. The unreformed House of Commons took as little interest in such questions as, according to Lord Salisbury, the House of Lords took in 1869.¹ The widening and the deepening of the differences between the two Houses upon questions of practical legislation have been the result of the more active interest which the House of Commons has taken in such subjects in consequence of its adaptation as a more truly representative body. The more that House has been made the mirror of the nation's opinion the greater has become the divergence between its ideals and those of the House of Lords. The Reform Act of 1832 is, from a constitutional point of view, a broad line drawn between mediævalism and modernism. The House of Lords maintains its mediæval composition; the House of Commons is constantly harmonising itself with modern advance. It is inevitable, therefore, that the conflict between two Houses so constituted must, as Lord Rosebery pointed out in 1888, become more and more acute as the years pass on.²

The Reform Bill was not the result of any sudden and ill-considered demand. The impulse which brought it within the range of practical politics had been gathering force and vigour for little less than a century. The attempt made in the "Instrument of Government" to reform the electorate and to redistribute seats, which was largely an adaptation of a proposal made in the Long Parliament, although it was an interesting anticipation, not only of the first Reform Bill, but also of some of the provisions of the two Acts of Union, cannot be

¹ See *ante*, p. 123.

² Hansard, vol. cccxxiii. p. 1555.

accounted the origin of the demand for reform. Subsequent events proved that the scheme of the "Instrument" was not supported by any general desire for such a change. The first challenge in the long struggle which resulted in the victory of 1832 was sounded in 1745. The provocation was the rebellion in favour of the Young Pretender; the occasion, an amendment to the address. This amendment, which was moved by Sir Francis Dashwood, was couched in very general terms, and was negatived without a division.¹

The elder Pitt, who strenuously opposed that amendment, vigorously supported the cause of reform in the House of Lords in 1770,² but it was left for his son, William Pitt, to take the next practical step. The conduct of Mr. Pitt with regard to this question is well-nigh inexplicable. In 1782 he moved for a select committee to inquire into it, and the motion was only lost by twenty votes.³ In 1783 he moved a series of resolutions, in which he proposed to disfranchise boroughs convicted of bribery and to confer additional representation on London and the counties;⁴ and in 1785, when he was Prime Minister with an assured majority in the House of Commons, he brought forward a moderate proposal for reform which was defeated by seventy-four votes.⁵ From that date he became as uncompromisingly hostile to all proposals for reform as he had hitherto been uncompromisingly favourable, and it is question-

¹ "Parliamentary History," vol. xiii. p. 1337.

² *Ibid.* vol. xvi. p. 747.

³ Earl Stanhope, "Life of Pitt," vol. i. pp. 73, 75.

⁴ *Ibid.* p. 118. The resolutions were rejected by 293 to 149.

⁵ *Ibid.* p. 256. Lecky, "History of England," vol. v. p. 60.

able whether his measure of 1785 was brought forward with any intention that it should succeed. In office he perceived the value of the rotten boroughs to a Minister of the Crown, which had been veiled from his observation in Opposition, and no man did more, as we have previously shown, to strengthen the power of the Lords, both in their own House and in the Commons, and thus to multiply the difficulties which subsequently beset the path of the reformers.

The subject was next raised in 1793 in consequence of numerous petitions in favour of reform, one of which has already been mentioned. The leader of the reformers was now Mr. Grey, and its great opponent was Pitt.¹ Mr. Grey brought forward the question again in 1795 and 1797; but the French Revolution had struck terror into the minds of men, and the great war silenced for a time the cry for reform.

But the peace of 1816, and the consequent agricultural distress, which the Government in vain endeavoured to alleviate, in the interests of the landowners, by imposing a duty on corn, caused the agitation for reform to break out once more, and with greater menace. In 1819 Sir Francis Burdett raised the question in the House of Commons, and moved "that early in the next session of Parliament this House will take into its most serious consideration the state of the representation."² In view of what Dr. Oldfield said three years before about the composition of the House of Commons, it is not surprising that the motion was rejected. The result was a strenuous and dangerous agitation in all parts of the

¹ "Parliamentary History," vol. xxx. p. 890.

² Hansard, vol. xl. p. 1467.

country. The most disaffected counties were "proclaimed," and the struggle culminated in the "Peterloo Massacre," the tale of which has so often been told.¹ The country was on the eve of rebellion, and the Government replied with Acts of Parliament for the seizure of arms, and for suppressing secret drilling.

Nevertheless, in the same year Lord John Russell brought the question of reform before the House yet once again, but the Government hinted that they were prepared to deal with the subject, and he withdrew his motion. The Government, however, never took the matter up: a semblance of quiet was produced by their repressive measures—a semblance which they mistook for reality, and they said, no doubt, in their hearts that "Reform was dead."²

The Government of the Duke of Wellington, which came into power in 1827, were pledged not to do two things—to emancipate the Catholics, and to reform the House of Commons. They did the one and they made possible the other. It is improbable that the Reform Acts would have been carried in 1832 if the Catholic Emancipation Act had not been carried in 1829. The latter Act was passed with the assistance of the Whigs and in spite of the stubborn resistance of a large section of the Tory party. The latter were determined upon revenge for what they considered the traitorous desertion of principle of which the Government had been guilty. In the session of 1830 one of them, the Marquis of Blandford, brought forward a

¹ Molesworth, "History of England," vol. i. pp. 11-17.

² For a more exhaustive account of the history of the reform movement, see May, "Constitutional History," vol. i. p. 393 *et seq.*

resolution in favour of reform, and, after its defeat, he embodied its principles in a Bill, which included not only redistribution but payment of members. Lord Althorp moved as an amendment to the motion for leave to bring in, that "a reform in the representation of the people is necessary." Both the motion and the amendment were defeated.¹ A Bill brought in by Lord John Russell for the enfranchisement of certain large towns met with a like fate; but this coalition between Whig and Tory was ominous of what was to follow. The death of George IV. involved a dissolution, and the Duke of Wellington decided that it should take place immediately. The Government were deserted by a large number of their usual supporters, who either abstained from voting, or voted for Tory candidates in opposition to the old members who had helped to carry Catholic emancipation. The result was that the Government lost about fifty seats, and remained in power with a damaged reputation. On the assembling of Parliament the Duke of Wellington made a declaration against reform in any shape, a quotation from which has already been made, which had the effect of pledging the Government not to take the subject into consideration, even to the extent of disfranchising the smallest and most corrupt borough. This declaration, for which there was no apparent necessity, proved that on this question at any rate no concession could be obtained from the Government by pressure; and it increased the dislike which was felt for the Ministry throughout the country. It was clear that they had not long to live. The Duke's

¹ Walpole, "History of England," vol. ii. p. 535.

declaration precluded all possibility of support from the Whigs, and the anti-Catholic Tories were still unrepentant. In November the Government were defeated upon a motion in the House of Commons for a select committee to inquire into the Civil List.¹ This was not a defeat which in the ordinary course would have necessitated resignation, but the Government determined to accept it as a vote of want of confidence rather than face the possibility of a rebuff upon a pending motion by Mr. Brougham in favour of reform.² The Ministry therefore resigned the next morning. The King sent for Earl Grey, who throughout his life had been a consistent advocate of the cause of reform. Before accepting office he announced to the King that the question of reform would become a Ministerial measure in any Government of which he was the chief.³ Lord Grey found no difficulty in forming his Ministry. Mr. Brougham became Lord Chancellor, Lord Althorp Chancellor of the Exchequer, and Lord John Russell Paymaster of the Forces, without a seat in the Cabinet. Thus, on November 22nd, 1830, the United Kingdom was for the first time since 1654, governed by a Ministry which was pledged in favour of reform. The fight had been long and tedious. The advocacy of the measure upon which the new Ministers had staked their political existence had hitherto excluded them from office. They were one and all new to official life, and the permanent staff of their departments, trained up under the old *régime*, were not likely to render them any great assistance. The

¹ Hansard, vol. i. Third Series, c. 525.

² Molesworth, "History of England," vol. i. p. 42.

³ Ibid. p. 45.

country expected great things of them, not only in regard to the measure which they placed first in their list, but in regard to financial reform. In addition to all these drawbacks, they could command no certain majority in the House of Commons. The anti-Catholic Tories were not to be relied upon. Although they might coquet with reform to embarrass the Duke, the love of it was not in their hearts, and they were certain to return to the Tory fold when the first note of battle should sound. And behind all these difficulties loomed the House of Lords, pledged upon the strongest of grounds, that of personal interest, to maintain the existing anomalies.

Such were the auspices under which the Ministry commenced the reform campaign. It must be confessed that they appeared sufficiently gloomy. The only ray of encouragement was the invincible determination of the people that, at all hazards, reform should be carried.

CHAPTER XIII.

REFORM CONTINUED—THE LORDS ASSERT THEIR DIGNITY.

IT is not within the scope of this inquiry to follow with any minuteness the fortunes of the Reform Bill in the House of Commons. Its business is with the manner in which the House of Lords dealt with the question. In the foregoing outline of the evolution of opinion upon the subject of reform enough has been said to show that the feeling in favour of some sweeping measure had been maturing for a lengthened period. Reform had been discussed in Parliament and upon the platform for many years. The pioneers of the movement had passed away without the gratification of perceiving any promise that their aspirations would ever be realised. Their places had been taken by younger men, whose heads had grown grey before a Government favourable to their cause came into power. If, therefore, the country pronounced unequivocally in favour of reform, it would be impossible to assert that the decision had been taken without due deliberation; and consequently one of the chief reasons which are supposed to justify the House of Lords in throwing out a Bill would be demonstrably nonexistent.

It has already been shown how impossible it was that the Government of Earl Grey could maintain a working majority in the Parliament of 1831. Nevertheless, they were pledged to reform, and Lord John Russell courageously brought in his Bill. One short quotation only will be made from his speech, because it forcibly illustrates the dangers which had to be overcome, and the attitude which it was necessary for a popular Minister to assume in the unreformed Parliament. "I appeal," Lord John said, in his peroration, "to the *aristocracy*. The gentlemen of England have never been found wanting in any great crisis. . . . I ask them now, when a great sacrifice is to be made, to show their generosity, to convince the people of their public spirit, and to identify themselves for the future with the people."¹ The Minister was on his knees to the House of Lords, praying, not for justice, but for generosity. The manner in which the Lords responded to the appeal will be seen.

On March 1st, 1831, Lord John Russell asked leave to bring in the Bill. This was granted without a division on March 10th, and the Bill was read a first time on March 14th. The second reading debate began on March 21st, and on the following day it was carried by a majority of one. This result was achieved by the defection from the Tories of Sir John Calcraft, who had been a member of the Wellington administration. Had he voted with his party the second reading would have been defeated. It was clear, therefore, that the Ministry could not hope to carry their measure in the present Parliament. On the motion to go into committee General Gascoyne moved an instruction that the number

¹ Hansard, vol. ii. Third Series, c. 1088.

of members of the House of Commons ought not to be diminished.¹ Lord Althorp announced that the passing of the instruction would be fatal to the Bill, but nevertheless it was carried by a majority of eight.²

And now occurred the first brush with the House of Lords. The position was critical for the Ministry. They were in a minority in a Parliament which had only existed for a year, and the King was strongly opposed to an immediate dissolution. The Court party strained every nerve to strengthen this opposition, in the hope that the King would assert his independence and refuse to dissolve. In that case the Ministry would have been compelled to resign, and it might have been possible for a reconstructed Tory Government to preserve its existence for five or six years, and thus postpone the evil day. With this object in view the House of Lords determined to fortify the King in his opposition to a dissolution. Lord Wharncliffe, on April 21st, gave notice that on the following day he would move that "an humble address be presented to his Majesty praying that his Majesty will be graciously pleased not to exercise his undoubted prerogative of dissolving Parliament."³

This resolution, if it had been carried, would, in the opinion of Lord Brougham, have made the proposed dissolution impracticable, on account of the moral support which it would have given the King.⁴ Lord Grey's

¹ Hansard, vol. iii. Third Series, c. 1527.

² Ibid. c. 1568.

³ Ibid. c. 1742.

⁴ Mr. Molesworth says that Lord Brougham declared that the passing of the address would have "rendered a dissolution constitutionally impossible" (*"History of England,"* vol. i. p. 122). But Lord Brougham has distinctly stated the contrary: "Nothing

Government, therefore, believed that, if Lord Wharncliffe succeeded in bringing his motion to a successful division it would be impossible to dissolve Parliament, and that the only alternative was resignation and the return of the Duke of Wellington to power. The King had already consented, much against his will, to a dissolution, but no time had been definitely fixed. It was necessary, therefore, that he should be persuaded to dissolve Parliament before Lord Wharncliffe's motion could be carried.

On the morning of April 22nd the Government, without acquainting the King with their design, made every preparation for him to go down to the House and dissolve Parliament that afternoon. When these were completed, Earl Grey and Lord Brougham waited upon William IV. for the purpose of persuading him to acquiesce. There is much conflict of evidence as to what actually took place at this interview, but the King's consent was eventually obtained.¹

While the King was driving to the Houses of Parliament the opposition Lords were endeavouring to force a division upon Lord Wharncliffe's resolution before his arrival. The supporters of the Government, on the other hand, were occupied in making dilatory motions with a view to gaining time. Fortunately for them

can be more certain than that such an address, if carried, would in no respect have deprived the King of the power he has by the constitution to dissolve Parliament; but it is no less certain that had such an address been carried, the King would too gladly have taken advantage of it" (*"Life and Times of Lord Brougham,"* vol. iii. p. 114).

¹ *Ibid.* p. 115. Molesworth, *"History of England,"* vol. i. p. 123. Walpole, *"History of England,"* vol. ii. p. 645.

they found an ally in the camp of the enemy. Lord Londonderry sprang to his feet, and commenced a violent indictment against the action of the Ministry. When he ceased, and Lord Wharnccliffe at last obtained a hearing, it was too late: the King had arrived.¹ The members of the House of Commons crowded to the Bar and the King read the speech which had been prepared for him announcing a dissolution, "for the purpose of ascertaining the sense of my people . . . on the expediency of making such changes in the representation as circumstances may appear to require."²

The sense of the people was not long in declaring itself unofficially. When the news of the dissolution became known the country rang from end to end with rejoicings. London and other large towns were illuminated. The judicious opponents of the Bill, who did not share in the general enthusiasm, lighted up their houses to ensure the safety of their plate glass. Those anti-reformers who valued principle above expediency, and refused to illuminate, had their windows broken by the too enthusiastic mob. Even Apsley House, the residence of the Duke of Wellington, did not escape.

When the general election commenced it soon became evident that this ebullition of popular excitement represented the overwhelming feeling of the country. One after another the chief opponents of reform went down before its popular advocates. Even in some of the purely nomination boroughs the power of patronage was compelled to succumb before the awakened zeal of the electors. The Government returned from the polls

¹ Greville, "Memoirs," vol. ii. pp. 136, 137.

² Hansard, vol. iii. Third Series, c. 1310.

with a majority of 136 ; the Opposition, a defeated and disheartened minority.¹ It was this expression of public opinion which the House of Lords desired to prevent by passing Lord Wharncliffe's motion—a desire which the Government had frustrated by their foresight and promptitude.

Parliament was opened by the King on June 21st, and the Reform Bill was immediately reintroduced in the House of Commons. Although the wrecked Tory party saw no prospect of defeating it, they saw, or persuaded themselves that they saw, possibilities of victory in delay. They indulged in the vain hope that, if the debates upon the Bill were prolonged, the country would weary of the cause of reform. The Tory party have never been unwilling, after a defeat at the polls, to adopt this Micawber-like policy of "waiting for something to turn up." They resorted to all those arts of obstruction which have recently been brought to such perfection. On the motion to go into committee, the adjournment of the House was moved eight times in succession.² There was a "wrecking" committee, under the chairmanship of Sir Robert Peel, which kept up the supply of amendments. The same speeches were repeated again and again with wearisome iteration. And when the public grew restive under the delay, and blamed Ministers for treating frivolous amendments with too much seriousness, the Tories declared that these complaints were signs that the country was "sick of the Bill."³ The opponents of the Bill were practically the

¹ Molesworth, "History of England," vol. i. pp. 130, 131.

² Commons' Journals, vol. lxxxvi. part 2, p. 647.

³ Molesworth, "History of England," vol. i. p. 150.

representatives of the pocket and corrupt boroughs ; in other words, the hirelings of the aristocracy who were fighting their last battle for the retention of their illegitimate influence over the House of Commons.

After a prolonged and weary struggle the Bill emerged from committee ; it was finally passed by the House of Commons on the morning of September 22nd ; and it was sent up to the House of Lords on the same day. The Lords read the Bill a first time, and fixed the second reading for October 3rd.

During the interval the nation was seething with excitement. Petitions to the House of Lords in favour of the Bill poured in from all parts of the country. It seemed hardly possible that the House would utterly reject a Bill which had been carried by large majorities in a Lower House fresh from the constituencies with a distinct mandate to pass it, and which had been unsuccessfully opposed by a minority of members who might not unfairly be described as direct representatives of the House of Lords rather than of the constituencies for which they nominally sat. Would they take this extreme course or would they adopt the more politic method of mutilating the Bill by carrying hostile amendments ? The answer was soon to come.

On October 3rd Earl Grey, in a studiously moderate speech, moved the second reading of the Bill. He made an earnest appeal to the Bishops, which was afterwards somewhat shamelessly distorted into a threat, to pursue what was then the traditional policy of the Episcopal Bench, and support the Government measure.¹ Lord

¹ Hansard, vol. vii. Third Series, c. 928.

Wharnccliffe, whom we have seen endeavouring to prevent the late dissolution, and who subsequently played a prominent part in securing the second reading of the Bill of 1832, moved its rejection.¹ This motion was supported by the Duke of Wellington in a long and rambling speech,² and by Lord Lyndhurst, who, in his old age, became the champion of the House of Lords against the attempt of Lord Palmerston to create life Peers. Lord Lyndhurst, like many other speakers, frankly admitted that his opposition to the Bill was based upon the fact that it would result in the abolition of aristocratic influence over the House of Commons.³ The Bishops, led by Howley, Archbishop of Canterbury, opposed the Bill. The debate was carried on for five nights until October 7th, when, after Earl Grey's reply, the House divided. It was found that 199 had voted, either in person or by proxy, for Lord Wharnccliffe's amendment, and 158 had voted against it. The Bill was, therefore, rejected by a majority of forty-one.⁴

There were only two methods of meeting the defiance thus hurled at the nation by the House of Lords. One was the creation of a sufficient number of new Peers to outvote the adverse majority; the other was agitation, which in the excited condition of the country might easily culminate in civil war. The King was known to be strongly averse from the former alternative, and had gone so far as to declare that he would never consent to it. In the crisis which the House of Lords had deliberately provoked it seemed, therefore, that force was the only weapon which was available, and it is

¹ Hansard, vol. vii. Third Series, c. 969.

² *Ibid.* c. 1186.

³ *Ibid.* vol. viii. Third Series, c. 287.

⁴ *Ibid.* p. 339.

well-nigh certain that, had it been wielded, the consequent "reform" would have been far more drastic than the proposal which the House of Lords had rejected. It is important, therefore, to inquire somewhat minutely into the reasons which induced some two hundred gentlemen, whose function in the constitution was, in theory, to exercise a moderating influence, to plunge the country into so much turmoil.

Now if we consult the latest defender of the House of Lords, Mr. W. C. MacPherson, we shall find that, in his opinion, the Peers who opposed the Reform Bill were gifted with a prescience which amounted almost to prophecy. He tells us that these Lords foresaw that the admission of the middle classes to political power meant the destruction and the disruption of our Colonial Empire. Without pausing to inquire whether these gloomy vaticinations, supposing them for a moment to have been entertained by the Peers, have been fulfilled, we note that certain existing conditions in some of the colonies,¹ lead Mr. MacPherson to conclude that they "proclaim the patriotism and wisdom of the Peers in questioning the policy of the first Reform Bill,"² and that their action "was prompted by considerations that do equal credit to their patriotism and foresight."³ Now this eulogy, if deserved, is extremely gratifying, because no gift can be more valuable to a member of a second chamber than the capacity to "look into the seeds of time, and see which grain will grow and which will not." But the question is, did the Lords possess that gift, and did they ever exercise it in the manner attributed to

¹ "The Baronage and the Senate," p. 142.

² Ibid. p. 149.

³ Ibid. p. 153.

them? Now a large number of the opposing Lords have fortunately left behind them a written record of the reasons which influenced their conduct. Members of the Upper House possess the privilege, when they dissent from any measure which the House accepts, of recording their reasons in the Journals of the House in the form of a protest. When the Reform Bill was passed by the Lords in 1832 no less than 105 of the opposition Peers exercised this privilege. The value of these documents, as an exposition of the reasons which influenced the Peers against the Reform Bill can hardly be over-estimated. Speeches in Parliament are liable to present a distorted view of the speaker's reasons because they are apt to be infused with the passion engendered by debate. But these protests are the product of calm reflection in the study. They state sharply, concisely, and without ornamental flourish, the grounds of the dissenters' objections, and although they were recorded as a protest against the passing of the Bill in 1832, they necessarily contain the reasons which led the same persons to vote the rejection of the Bill in 1831.¹

There are twelve of these documents, bearing 248 signatures of 105 individuals. In many of them the same reasons are repeated in different language. In the following analysis of those reasons an attempt has been made to state them, not by quotation, but fairly and accurately by combining as far as possible in a condensed form the terms of the various similar paragraphs. In the footnote to each condensed "reason"

¹ These protests are collected in "The Protests of the Lords," by the late Thorold Rogers, vol. iii. p. 84 *et seq.*

the dissents in which it is contained are referred to by the name of the first signatory, and the paragraph relied upon is stated. The reasons are arranged in the order in which they were most numerous supported, no duplicate signatures having been counted.

I. Because the Bill strikes at the foundation of the constitution, endangering the stability of the Monarchy, the House of Lords, and of every other civil and religious institution. It introduces a new and untried form of government, which is impracticable, and if practicable would be pernicious. The House of Commons as at present constituted is, above all other institutions of all other countries in the world, the institution best calculated for the general protection of the subject.¹

II. Because chartered rights and vested interests in boroughs, which are, in fact, property, are now for the first time abandoned and treated with reckless indifference, thus creating a most dangerous precedent.²

III. Because the Bill closes the doors of the House of Commons to the representatives of the landed and commercial interests, and confers undue advantage on towns.³

IV. Because undue political influence is given to the Metropolis.⁴

¹ Supported by 99 Peers—Wellington, 1, 4; Carnarvon, 1, 2, 3; Eldon, 1, 3, 7; Wynford, 1, 6; Powis, 2; I. Melros, 1; Beverley, 1; Ellenborough, 1; Newcastle, 1.

² Supported by 91 Peers—Wellington, 3; Eldon, 5, 6; Newcastle, 1; Powis, 1; Beverley, 2; Mansfield, 2.

³ Supported by 85 Peers—Wellington, 5; Carnarvon, 2; Wynford, 2, 3; Ellenborough, 1; Mansfield, 3; Malmesbury, 1.

⁴ Supported by 77 Peers—Wellington, 5.

V. Because undue influence has been exercised by the Government over Peers, and new creations have been threatened in order to carry the Bill.¹

VI. Because part of the expenses of carrying out the Act are charged upon the Poor Rate. The duties imposed upon overseers are onerous, complicated, and harassing, and will prevent respectable persons from seeking the office.²

VII. Because certain amendments have been rejected by the Government.³

A little consideration of this beggarly array of empty reasons will reduce their value still farther. Numbers V. and VII. are objections to the methods used in promoting the passage of the Bill, not to its merits; and they therefore do not affect the question. Numbers IV. and VI. are objections to matters of detail, and are subjects for amendment, not causes for rejection. The essence of the Lords' objections is contained in the first three reasons.⁴

Now the first reason is in every protest couched in such vague and general terms that it might be applic-

¹ Supported by 67 Peers—Eldon, 4; Newcastle, 2, 7; I. Melros, 3; Beverley, 1; Mansfield, 4; Salisbury, 1.

² Supported by 11 Peers—Malmesbury, 1, 2, 3.

³ Supported by 6 Peers—II. Melros, 1.

⁴ The correspondence of the Duke of Wellington does not disclose any broader grounds of opposition than those set out in the protests. But it reveals the fact that there was a consideration which could not at the time be stated with any chance of acceptance by the public. "We here think that there is reason to believe that there is a very prevailing change of opinion in the country upon the subject of the Bill. At all events we think the House of Lords ought to give the country a chance of being saved by affording further time to consider the question" (Wellington, "Correspondence," Letter to the Marquis of Bath, vol. vii. p. 531).

able either to the abolition of the Monarchy or to the defeat of a vestryman. It is one of those oracular utterances which are capable of adaptation to any conceivable set of circumstances. No evil has befallen the nation which could not, by a skilful interpreter, be construed into a fulfilment of this mournful prophecy. The only test which can be applied to it is to ask a dispassionate answer to the questions—Has the passing of the Reform Bill endangered the constitution, and would it not have been more endangered by the rejection of the Bill? Has the system introduced by it proved either impracticable or pernicious? Was the reformed House of Commons less adapted than its predecessors for the general protection of the subject? The answer to these questions is decisive as to whether the House of Lords was inspired by “patriotism and foresight” or blinded by narrow and partisan prejudice.

Reasons II. and III. go home to the root of the matter in a fashion which is almost brutally frank. The Bill abolished the vested interests of the aristocracy and of the wealthy classes in the nomination and the corrupt boroughs, and thus rendered it less easy for the Peers and their allies to maintain their unjust and unconstitutional control over the representation of the people in the House of Commons. The Peers publicly declared, with startling effrontery, that they considered the representation of the nomination boroughs to be a property vested in those who claimed to be their patrons as completely as if it were an estate in land. They resented the creation of new, populous, and independent constituencies as an attack upon their divine right to control the government of the country and to keep the

emoluments of place and office within the circle of a narrow oligarchy. These reasons are no broader or more statesmanlike than the objections of a grasping usurer to the extension of the jurisdiction of a Court of Law over his nefarious transactions.

The inevitable conclusion, therefore, from the written statements of the dissentient Lords, is that, apart from indiscreet declamation and prophecy of evils which have never resulted, the Peers were actuated in their opposition to reform by reasons which were purely personal and selfish. So far as they attempted a general survey of its probable results their conclusions were wholly and ridiculously false ; on the points upon which they came to a correct conclusion they were considering the interests of their caste only, not those of the nation. When Mr. MacPherson sees in their conduct " patriotism and wisdom," and a wise consideration of large imperial interests, it is evident that he perceives what he desires for the purposes of his argument to perceive, and not the facts as they actually existed.

CHAPTER XIV.

REFORM CONTINUED—THE LORDS RUN AWAY.

THE rejection of the Reform Bill by the House of Lords plunged the nation into a state of ferment which needed but little fostering to develop into revolution. Even those who were bound by political considerations to applaud the action of the Peers, dreaded in their hearts its probable consequences. The popular anger was directed against the authors of the crisis, and more especially against the Bishops, who, for their supposed desertion of precedent, were accused of being mainly responsible for the defeat of the Bill. It was unfortunate for the Bishops that their consciences compelled them to abstain from their traditional policy of supporting the Government on a measure which a vast majority of the public so ardently demanded. On the other hand, if those reverend prelates were really convinced of the profundity and the justice of the arguments adduced by the opposition Lords against the Bill, the value of which we have had an opportunity of considering, it must be admitted that it would have been highly immoral of them to support it. But the populace were not

capable of so nice a discrimination, and they visited their wrath upon the Bishops in so practical a fashion that these unfortunate legislators dared hardly show themselves in public, even for the purpose of performing purely ecclesiastical functions. A huge mob assembled in front of the Houses of Parliament upon the Monday following the rejection of the Bill, and hooted and howled at the opposition Lords. The most obnoxious of them, among whom were the Duke of Newcastle and Lord Londonderry, were with difficulty saved from personal violence.¹

On the same day the House of Commons expressed in a more regular manner its intention to refuse to acknowledge its defeat at the hands of the House of Lords and its confidence in the Government. A resolution was passed by a majority of 131 reasserting "its firm adherence to the principle and leading provisions of that great measure" of Reform.²

Two days afterwards an immense procession, composed of 60,000 persons, marched to St. James's Palace to present an address to the King praying him to retain the Ministry, to press on the Reform Bill, and to remove from office all persons about the Court who were opposed to it. They were received by Lord Melbourne, the Home Secretary, who explained that the King was willing to receive the address from the hands of the members for the county of Middlesex. This course was therefore adopted. The King was now thoroughly frightened at the consequences of the rejection of the Bill. The one thing which he cared

¹ Greville, "Memoirs," vol. ii. p. 203.

² Hansard, vol. viii. Third Series, c. 385.

for was popularity, and this, by following Lord Grey's advice, and dissolving the late Parliament, he had succeeded in securing. Now he found that the hatred and rage with which the House of Lords was assailed would not spare the Crown. He therefore returned an answer to the deputation through Mr. Joseph Hume, who then represented Middlesex, which practically granted all the prayers of the petition. Mr. Hume, after delivering this reply, adjured the crowd to disperse quietly. The majority obeyed, but a portion of the rougher element broke loose. More noble Lords were mobbed, and even seriously threatened; and more windows of anti-reformers were broken.¹

Such was the condition of London. The state of the provinces was much more serious. In London the newly-established police were able to some extent to cope with disorder, but in the provincial towns there was no adequate protection against riot. Derby, Coventry, Loughborough, Bath, Worcester, and Nottingham were scenes of violent outbreaks. At the last-mentioned place, the castle, which belonged to the Duke of Newcastle, was set on fire and burnt down. In all these places the actual disturbance was provoked by some foolish demonstration of joy on the part of the anti-reformers; but these facts illustrate very forcibly the explosive condition of feeling throughout the country, and how small a spark might produce a general outbreak.

In one case the necessary provocation was administered, and the result was a general riot. Sir Charles

¹ Molesworth, "History of England," vol. i. pp. 178-198. Annual Register, 1831, p. 280.

Wetherell, who had been Attorney-General in the Wellington administration, and who had been dismissed from office on account of his uncompromising hostility to the Catholic Emancipation Bill, had distinguished himself by his pertinacious opposition to the Reform Bill in all its stages. He was Recorder of Bristol. Soon after the rejection of that Bill he had to attend Quarter Sessions. The Mayor of Bristol, knowing the violence of popular feeling in the city, endeavoured to persuade him to postpone the Sessions, but he refused. On October 29th he made his public entry into Bristol, and was received by a vast mob with hootings and stone-throwing. An attempt was made to hold a court, but this proved impossible, and it had to be given up. Sir Charles was with difficulty escorted to the Mansion House, which was at once surrounded and attacked by a ferocious mob. The few constabulary who attempted to defend it were overpowered, and Sir Charles was compelled to escape ignominiously from the city disguised as a postillion.

But the riot did not subside with the disappearance of the cause of it. For three days the city was at the mercy of the rioters. The military were called in, but they were badly handled and served rather to provoke the disturbance than to quell it. The Mansion House, the Bishop's Palace, the Custom House, and the Excise office, as well as many private dwellings were destroyed by fire, and the number of lives lost during the outbreak has never been accurately ascertained.¹

Such were the results produced by the rejection of the

¹ Molesworth, "History of England," vol. i. pp. 188-197. Walpole, "History of England," vol. iii. p. 160.

Reform Bill among the wilder and more hotheaded spirits. The action of the more sober supporters of the measure was not less ominous of eventual resistance in case the Peers should persist in their opposition. Political unions were formed in London and in every provincial town of any importance. These unions were in constant communication with one another, and they adopted a quasi-military organisation. The leaders of the Whig party saw in these unions the nucleus of a possible revolutionary army, and they began to feel alarm. Anti-reformers were persistent in the demand that these associations should be suppressed, and after the Bristol outbreak they were proclaimed illegal, although they had done nothing whatever to provoke or encourage that riot.

These evidences of scarcely suppressed insurrection made it clear to the opposition Lords and to the King that disaster must certainly follow any attempt to drive the Grey Ministry from power, and to replace it by a Tory Government under the Duke of Wellington ; and this opinion was informally conveyed to the Premier. To Ministers it was equally clear that their retention of office without an immediate reintroduction of the Reform Bill would prove only a temporary palliative. Parliament had been prorogued on October 20th by the King in person, who in his speech was made to assure the nation of his "unaltered desire to promote the settlement" of the question "by such improvements in the representation as may be found necessary for the securing to my people the full enjoyment of their rights, which in combination with those of the other orders of the State, are essential to the support of our free constitu-

tion."¹ It met again for the new session on December 6th, and on the 12th of the same month Lord John Russell moved for leave to bring in the Reform Bill which ultimately became law in the following year.

A few not very important changes were introduced into the new Bill, among which were some amendments which had been advocated by the Opposition. This gave Sir Robert Peel an opportunity, which he did not fail to seize, of eulogising the action of the House of Lords. He congratulated the House of Commons on the great escape they had had from the Bill of last session, and he expressed "a feeling of the deepest and sincerest gratitude to those to whom they were indebted for rescue from a danger which he had never fully appreciated till he heard the speech which the noble Lord had just delivered."² This attempt to rehabilitate the House of Lords was, if not very excellent, at least exceedingly transparent, fooling. If the Lords had objected to the Bill on the ground of the exclusion of these amendments, their straightforward course would have been to insert them, and to send the amended Bill back to the House of Commons for acceptance. But they rejected the Bill on other and more general grounds. Sir Robert Peel must have felt very keenly the need for some justification of the House of Lords when he was forced to rely upon so flimsy an argument. The absolute hollowness of the contention is proved by the fact that the main reason upon which the Tories based their opposition to the second reading was that the present Bill was more objectionable than either of

¹ Hansard, vol. viii. Third Series, c. 928.

² Ibid. vol. ix. c. 174.

those which had been previously brought forward.¹ Both contentions could not be true, and probably neither were seriously believed by those who advanced them. The second reading debate lasted for two nights, and resulted in the Government obtaining a majority of 162,² or 26 more than the number by which the second reading of the previous Bill had been carried. It is remarkable that this result was obtained in a much smaller House: 598 members voted upon the earlier Bill, while only 486 voted upon the later. Although the Government vote was less by 43 members, the Opposition failed to muster 69 supporters. This was practically an announcement that the Tories had abandoned the struggle; and although they kept up the fight in committee for nearly two months, it was with no hope of defeating or even of mutilating the Bill.

The Bill finally passed the House of Commons on March 22nd³ and was sent up to the House of Lords. While it was still in the House of Commons negotiations had been carried on between the King's secretary and the more moderate of the Lords, with a view, if possible, of arranging a compromise which would secure the acceptance of the Bill by the Upper House.⁴ These negotiations were so far successful that, in spite of the still uncompromising opposition of the Duke of Wellington, the Government were enabled to carry the second reading by the slender majority of nine.⁵

But although the principle of the Bill was thus agreed

¹ Hansard, vol. ix. Third Series, c. 344, 432, 474.

² Ibid. c. 546.

³ Ibid. vol. xi. c. 780.

⁴ Molesworth, "History of England," vol. i. p. 207.

Hansard, vol. xii. Third Series, c. 454.

to, its ultimate success was hopeless, because a large number of "the Waverers," as they were called, who, led by Lord Wharncliffe, had helped to carry the second reading, were pledged to such an emasculation of the Bill as would render it unacceptable to the nation.

The nature of the opposition which the Bill would have to encounter was not long in disclosing itself. The first hostile motion in committee was made with a view to postponing the disfranchising clauses until the enfranchising clauses had been considered.¹ This appeared upon the face of it a very harmless proposal, but its innocence was only apparent. If the Lords had been allowed to vote upon, and strictly to limit, the number of new constituencies which were to be allowed to return members, the number of rotten boroughs which would have to be disfranchised in consequence would have been correspondingly reduced, and the Peers would have been saved from the opprobrium which would have inevitably overtaken them had they by a direct vote refused to disfranchise such private property of their order as the boroughs of Aldborough and Beeralston. The Government were, therefore, bound to resist the proposal. They were determined that the nature of the Lords' opposition should not be concealed from public observation by a subterfuge. Earl Grey announced that the acceptance of the motion would be treated as equivalent to a rejection of the Bill ;² but it was nevertheless carried by a majority of thirty-five.³

Earl Grey then moved the postponement of the committee for three days. There was now no alternative

¹ Hansard, vol. xii. Third Series, c. 677.

² Ibid. c. 714.

³ Ibid. c. 724.

for the Government but to recommend the creation of a large number of new Peers or to resign. When these alternatives were placed before the King, who had never been very much enamoured of the Reform Bill but who was now actually hostile to it, he accepted the latter. On May 9th the Premier announced that the resignation of Ministers had been accepted.¹

When this news reached the country the consternation and resentment of the people were unbounded. Meetings were held everywhere to demand the recall of the Ministry; and resolutions were passed binding all present to refuse payment of taxes until the Reform Bill was passed into law. The Common Council prayed the House of Commons to refuse supplies;² and the House of Commons, not to be behindhand in asserting the will of the people, adopted a humble address to the King, asking that he would "call to his councils such persons only as will carry into effect, unimpaired in all its essential provisions, that Bill for reforming the representation of the people which has recently passed this House."³ The people were prepared to support their words by actions; there is no doubt that if the crisis had been greatly prolonged insurrections would have broken out in all parts of the country; and it was even reported that the army could not be trusted in such an event.

In these circumstances the King sent first for the Duke of Wellington and then for Sir Robert Peel, but these statesmen were not strong enough to cope with the crisis which they had been instrumental in creating.⁴

¹ Hansard, vol. xii. Third Series, c. 758.

² Annual Register, 1832, p. 171.

³ Hansard, vol. xii. Third Series, c. 788.

⁴ Walpole, "History of England," vol. ii. p. 676.

The Lords quailed before the Frankenstein which they had raised, and after much negotiation the poor King, who was now hooted and pelted whenever he appeared in public, was compelled to request the return of Earl Grey to power.¹ Being driven to this humiliation, he was obliged to accept the terms of the victors; and Earl Grey did not resume the seals of office until he had obtained the King's written consent to the creation of a sufficient number of Peers to carry the Bill, on the understanding that the eldest sons of Peers should be first selected.²

This interview took place on May 17th. When it was over the King's private secretary addressed a letter to the Duke of Wellington and his chief followers, stating that "all difficulties to the arrangements in progress will be obviated by a declaration in the House of Peers to-night from a sufficient number of Peers, that in consequence of the present state of affairs they have come to the resolution of dropping their opposition to the Reform Bill so that it may pass without delay, and as nearly as possible in its present shape."³ The hint was taken. The majority of the opposition Lords, after indignant protest, slunk away from the House, leaving the further progress of the Bill to be obstructed by a knot of powerless irreconcilables. The necessity for creating new Peers was thus obviated.⁴ The majority consoled

Molesworth, "History of England," vol. i. pp. 219-221.

² Annual Register, 1832, p. 187.

³ Grey, "Correspondence," vol. ii. p. 420.

⁴ "It may be a question, however, whether the manner in which the House of Lords was nullified by the compulsory absence of a great many of the majority was not more perilous for their authority than the creation of Peers which the Cabinet of Lord Grey proposed" (Earl Russell, "Recollections and Suggestions," p. 109).

themselves by signing with the utmost profuseness the protests which have already been considered, which are as striking a monument of their political incapacity as their methods of opposition were of their tactical ineptitude. The Bill was read a third time on June 4th, only twenty-two Peers appearing to vote against it,¹ and on the following day the Lords' amendments were agreed to by the House of Commons.² The Royal assent was shortly afterwards given by commission. The Reform Bills for Scotland and Ireland were subsequently passed without difficulty.

Thus ended the great struggle between the two Houses of Parliament, which resulted in the conversion of the Lower House from a pale reflection of the House of Lords into an assembly which represented with a fair approach to accuracy the feelings of the middle classes of England. There was no finality in the measure, although its authors represented, and perhaps hoped, that it would be final. Many changes were to follow, at a far distant period, before the House could be accounted a fair representation of the will of the people, and the end is not even yet. To those of the present generation the Reform Acts, from which many, when they were passed, recoiled as if they were revolution and anarchy in disguise, appear mere timid efforts half-heartedly undertaken. But it is the first step which costs, and this first step was the longest which was possible at the time. To have released the House of Commons from the bondage of the House of Lords was in itself a sufficient triumph for one generation.

¹ Hansard, vol. xiii. Third Series, c. 374.

² Ibid. c. 462.

But it is with the action of the House of Lords as a part of a political machine that this inquiry is chiefly concerned, and it must be remembered that the present constitution of that House does not materially differ from its constitution in 1832. Let us consider what would be the conduct of an ideal second chamber in dealing with a question of first-rate importance when it emerges upon the field of practical politics. In the first place, if the country had never been consulted upon the question, that chamber might be expected to support the Government of the day if it desired to take the sense of the constituencies. When the national will has been declared, and a Bill has been framed embodying the desire of the majority, the second chamber should consider it dispassionately. If it decides to amend or to reject the Bill it should be able to allege reasons for that conduct so cogent as to carry conviction to the minds of all who give them serious consideration. These reasons, published broadcast by the press, if they did not convert opponents, would at any rate inspire them with respect. Above all, the second chamber must take care that its decisions cannot be even suspected of being tainted by personal considerations, and its members must be strong enough to refuse to surrender their convictions on account of threats of mere personal disadvantage. Unless these conditions exist it is impossible that any upper chamber could long retain public confidence in a free country.

Now all these conditions were violated by the House of Lords in its dealings with the Reform Bill of 1832. The first interference of the Lords in the question was to endeavour, by a trick, to prevent the nation from

expressing its opinion, in the hope of replacing the Grey Ministry by a Government which for a time at least would shelve or merely dally with reform. When this trick had failed and the nation had expressed its desire for the measure with unexampled decisiveness, the Lords, by rejecting the Bill on the second reading, refused even to consider it. One reason for this rejection, as we gather from the statements of a large body of the opposing Lords, was that the Bill affected prejudicially what they were pleased to look upon as their "chartered rights and vested interests." When the Bill was sent up by the Commons a second time, the Lords, afraid to reject it absolutely, accepted the principle, but showed an intention to render it ineffective by hostile amendments ;—an intention which they abandoned solely because they dreaded the loss of dignity and prestige which their order would have suffered by the creation of a large number of new Peers.

In such a history the patriotism, foresight, and statesmanship with which the Peers are supposed to have been endowed, are extremely difficult to detect. It does not display an assembly inspired by lofty ideals and with a firm grasp upon broad principles of public policy, but a narrow class legislature, intent only on preserving its own advantages and privileges.

CHAPTER XV.

THE METHODS OF THE LORDS.

No one who has followed the political history of the last sixty years needs to be told that the forebodings of the Lords as to the consequences of the Reform Acts were never realised. The reformed Parliament was moderate to a degree which was grievously disappointing to the small band of Radicals who had accepted those Acts as an instalment only of the changes which they desired ; and members of the aristocracy found no difficulty in obtaining seats in it. It is true that the Parliament of 1833 and subsequent Parliaments legislated upon social questions which could never have obtained a hearing under the old system, but they dealt with them in a spirit of fairness and moderation. On the other hand, the attack upon the Established Church, sorely as the nation had been provoked by the attitude of the Bishops and the clergy towards the Reform Bill, was supported by a quite insignificant number of members, and was soon abandoned.¹ Strangely enough, no serious attempt was made to reform the House of Lords itself, the body which had been the prime cause

¹ The motion of Mr. Faithfull, on April 16, 1833, was rejected without a division, and almost without debate (Hansard, vol. xvii. Third Series, c. 194).

of so much commotion, and which had provoked so much just indignation.

But although no organic change in the constitution of the Upper House was attempted, the passing of the Reform Acts very seriously altered its relation to the other branches of the Legislature. No body of legislators can take up an attitude of uncompromising hostility to a measure, and afterwards surrender under pressure, making public, the while, reasons why it ought never to surrender, without serious loss of prestige as well as of dignity. Until 1832 the House of Lords had been, in fact and not merely in theory, co-ordinate in power with the House of Commons; and, if its illegitimate influence over the constituencies be taken into account, its control over legislation was greater. After 1832 the latter source of strength was, if not abolished, at any rate reduced to a minimum; and the co-ordinate power of the Lords was shattered. The year 1832 marks as important a limitation in the influence of the House of Lords as does the year 1688 in the prerogatives of the Crown. The Peers became vividly conscious of this fact, and they knew that one or two more such defeats would mean annihilation. Their subsequent policy has therefore been as far as possible to avoid meeting the advancing forces of democracy in set battle. They have contented themselves with laying ambushes to cut off stragglers, with simulating onset to intimidate the foe; or if they have on rare occasions come forth as if for a decisive engagement, it has always been with a fully secured line of retreat, of which they have been prompt to avail themselves. Their policy, in short, has been that of "the poor cat i' th' adage."

In other words, the conduct of the House of Lords has been, as the late Mr. Bagehot remarked, conspicuous for its timidity.¹ It may be added that the twin sister of timidity—hypocrisy—has not infrequently influenced the policy of the second chamber. This term must be understood as in no sense applying to individuals, but to the conduct of the Lords corporately. It is only natural that a body of men, recruited very largely from one class, and that class a minority of the nation, should be excessively keen, as the Lords were over the Reform Bill, to oppose all attacks upon their vested interests. It is also natural, because they represent a minority, that they should endeavour to conceal the true cause of their opposition from the majority by attributing it to other and more apparently valid considerations. Just as the lapwing pretends to be wounded to attract the observer from the neighbourhood of its nest, the House of Lords, in order to defeat a measure which it detests, but dares not reject upon its merits, assigns some reason other than its detestation for opposing it.

The first characteristic, therefore, of the methods of the House of Lords in dealing with legislation since 1832 has been a tendency to defeat or defer Bills upon some plausible excuse which is unconnected with the real grounds of their desire to prevent them from passing into law. A simple illustration of this method is the allegation that the Bill has come up from the House of Commons too late in the session for the Lords to be able to discuss its provisions with the deliberation and the minuteness which they deserve. Such an allegation

¹ "The English Constitution," p. 121.

has the advantage of impressing the public with the conviction that the House of Lords is strictly conscientious in the performance of its duties. But, in view of the marvellous rapidity with which the Lords can dispose of measures of even the highest importance and of the most complex character when once they give their minds to them, it is not difficult to perceive that a Government would find no insuperable obstacles to the arrangement of the prorogation of Parliament so as to avoid the necessity of passing the same Bill once more through the House of Commons in a subsequent session. The reason, therefore, if it is to be supposed to possess any validity, means that the Lords prefer their own convenience to that of the nation. This method was employed with excellent effect against the Ballot Bill of 1871.¹ The Lords in their hearts dreaded the legalisation of a mode of voting which would destroy one of the last vestiges of the influence which the aristocratic and the wealthy classes retained over the poorer electors. This is not mere surmise, for the Lords took the trouble to prove the fact in the following year, when the Bill came up at a period when it was impossible to plead want of time for consideration as an excuse for rejecting it. The Lords then inserted amendments which had the effect of making secret voting optional.² This was a most ingenious form of hypocrisy, because it could be supported by large

¹ Lord Shaftesbury, in moving the rejection, said: "I do not intend to question the principle of the measure, or even to enter upon the merits of the measure itself. I simply protest against being called upon at this season of the year to discuss a measure of such vital importance" (Hansard, vol. ccviii. c. 1264).

Hansard, vol. ccxi. p. 1802 *et seq.*

appeals to the Englishman's love of liberty and independence. But if the amendment had been accepted by the House of Commons it would have rendered the Act inoperative. A man would only elect to vote secretly when he was the subject of undue influence, and intended to vote against that influence. In such circumstances it would be frivolous to pretend that the ballot concealed the real nature of his vote. And this was precisely what the Lords contemplated and desired. Being precluded from pleading want of time, they attempted to wreck the Bill by another device, and thus conclusively proved their hostility to its principle. But this plea of lack of time is the simplest form of evasive opposition adopted by the Lords. The more complicated methods will be described hereafter.

But these methods are at best but temporary expedients for delaying obnoxious legislation. The excuse offered for the rejection is in itself a tacit admission of the principle of the Bill which is thus thrown out; and cases have arisen in which the Lords have decided upon more strenuous opposition. In such cases a rejection of the Bill point blank upon the second reading is the less common form of challenge. The lesson of the Reform Bill has not been forgotten, and it is rarely that the principle of an important Bill has thus been negatived. The more favourite form of opposition, which is frequently tantamount to rejection without being burdened with its disadvantages, is generally described as "mangling" the Bill. This process consists in introducing as many hostile amendments as possible, often those which have been proposed by the minority in the House of Commons and rejected, for the purpose of

paralysing the efficiency of the Bill. An instance of this method has been already cited in the amendments which the Lords introduced into the Ballot Act of 1872. But that Act was too simple a measure for the Lords to be able to employ the method with effect, and the House of Commons had no difficulty in defeating the attempt to emasculate the Bill. But when a Bill contains numerous and complicated clauses, all of which are liable to captious amendment, the mangling process can be employed with more encouraging results. When this is done, the Government of the day is placed in the following dilemma : It must either drop the Bill which, in its opinion, no longer accomplishes the purpose for which it is designed, and thus not only sacrifice the labour of perhaps the larger part of a session, but also incur the loss of prestige which is the inevitable consequence of failure ; or it must endeavour to secure some result in legislation by a compromise, and accept such of the Lords' amendments as it deems the least dangerous to efficiency, in the hope that the Peers on their side will waive their more extreme demands. The danger is that a Government, for the sake of immediate reputation, will adopt the latter course, and it is not too much to say that many excellent efforts in legislation have been impaired by so doing. The results of the mangling process, which is equivalent to rejection, are well illustrated by the fate of Lord John Russell's Bill for the Prevention of Bribery, in 1834. The reformed House of Commons was naturally anxious to neutralise the undue influence which the aristocracy still exerted in the constituencies by means of their wealth. They had sent up to the Lords five Bills for the disfran-

chisement of the freemen of five boroughs who had been convicted of open and notorious corruption. Such Bills were at that time passed after investigation by both Houses, much in the same way as private Bills are passed at the present time. The Lords had arrived at conclusions different from those of the House of Commons, and the Bills had fallen through. Lord John Russell's measure proposed the constitution of a committee of the House of Commons who should receive evidence and report upon oath; the intention being that such a report should be accepted as conclusive by the House of Lords.¹ The costs of petitioners were to be paid by the Treasury.² The House of Lords reconstructed this committee by insisting that five members of their own House should sit upon it, and they rejected the clause for payment of costs. With regard to the former amendment it is impossible to dispute the justice of O'Connell's remark, that "they ought no more to allow the House of Lords to have anything to do with originating a measure referring to the election of a member of the House of Commons than they would allow the House of Lords to have anything to do with originating a pecuniary measure."³ The object of the refusal of costs was clear. The expense of petitions in those days was enormous, and the petitioners were in most cases poor persons, who were proceeding against wealthy offenders. It is more in the interest of the state than of the private individual that the purity of elections should be maintained. The proposal of the House of Commons was not, therefore, unreasonable. But the Lords in their

¹ Hansard, vol. xxii. Third series, c. 610.

² Ibid. vol. xxv. c. 1022.

³ Ibid. c. 1024.

wisdom saw fit to throw themselves as a bulwark before the wealthy offender. These amendments, together with others of less importance, rendered the Bill, as Lord John Russell said, "entirely a new measure." Unwilling to sacrifice the time and labour which had been expended upon the Bill, he was at first inclined to accept the Lords' amendments; but the opinion of the House of Commons was against him, and the Bill was dropped.¹

The third defect in the methods of the House of Lords in dealing with legislation is that it fails to protect minorities. This assertion may sound startling, but it can nevertheless be conclusively proved. It is often alleged that the majority in a democratic assembly elected by popular constituencies are prone to neglect the interests of minorities which are not numerous enough to make their influence felt politically. The allegation, if carefully tested by the facts of history, will be found to possess less foundation than its supporters imagine; but it may be safely said that, whatever the shortcomings of the House of Commons in this respect may have been, the House of Lords has proved itself the greater offender. It might be imagined that the Upper Chamber, unswayed as it is supposed to be by the gusts of popular passion, would have been as a city of refuge, to which all who were poor and oppressed might have fled for comfort and for protection. It has chosen rather the part of the unjust judge, denying redress to the impotent, until, by continual coming, it is wearied. Nothing is more astonishing, in the history of the last sixty years, than the hawk-

¹ Hansard, vol. xxv. c. 1025.

like manner in which the Peers have swooped down upon and destroyed Bills which have been presented to them by the House of Commons for redressing the grievances of small minorities, or of those who are by untoward circumstances precluded from raising an effective voice in their own behalf. An illustration of this vicious tendency is afforded by the persistence with which the House of Lords for five-and-twenty years resisted the efforts of the House of Commons to remove the political disabilities of the Jews; and other instances, more cruel in their injustice, will be cited when the subject is dealt with more fully.

Such are the leading characteristics of the methods which the House of Lords has adopted during recent years to hinder legislation which is distasteful to them; and which may be summarised shortly as dilatory and evasive where the large interests of great numbers are at stake, and prompt and decisive only when the concerns of insignificant and powerless minorities are at issue. To the idealist who believes in the advantages conferred by a second chamber, and who in consequence must believe in a second chamber which is slow to strike, but when it does strike, strikes with effect, and is able to give such reasons for its action as will convince all but the most unscrupulous partisans that it is influenced by profound considerations of national welfare, such conduct must be a cause for mourning and lamentation. And this subject leads to another consideration which proves the practical inefficiency of the House of Lords as a second chamber. It has never, during the whole period since the passing of the Reform Acts, by the exercise of any of the tactics which have been described, succeeded

in permanently defeating any proposed legislation, with the exception of a single instance which comes under the third category of legislation in favour of politically impotent minorities. *The Times*, not long ago, in a panegyric upon the House of Lords, declared that, had it not been for the benevolent intervention of that House, we might at this time have all been marrying our deceased wives' sisters. Without pausing to consider a possibility which cannot be described either as calamitous or the reverse without causing offence, it may be said that this immunity is hardly a sufficient compensation for the wrecking and the emasculation of more important measures. But the laudation of *The Times* serves to emphasise the fact that the "Deceased Wife's Sister Bill" is the only Bill of any importance which the House of Lords has succeeded in obstructing permanently. They have spoiled many a measure which they have consented to pass; they have rejected others with loud declarations that they would never assent to the principle involved; but in the end the most of the spoilt measures have been restored to efficiency by supplementary legislation, and the rejected Bills have been forced upon the unwilling House by the pressure of popular opinion, as was the case with the Bill for repeal of the paper duties which the Lords rejected in 1860¹ and which was subsequently forced upon them in another form by the House of Commons, supported by the voice of the nation.

It is sometimes contended that this method of delaying legislation is in itself salutary because it secures

¹ Hansard, vol. clviii. c. 1545.

more careful consideration of proposed changes. This might be true if, in the majority of cases, or even in a considerable proportion of them, the Lords' objections were, upon reflection, supported by the sense of the people; but as this has never happened with regard to measures of any importance, the defence is valueless. And the method entails two disadvantages—one to the classes whose interests are affected by the legislation to which exception is taken by the Lords, and one to the commonwealth as a whole. Whenever Bills which were supposed to affect injuriously class interests have been rejected by the Lords, they have been, in the long run, followed by measures of a far more drastic and "thorough" character, which the Upper House has been compelled to accept. Thus the Lords, who are supposed to be the bulwark of vested interests and class privileges, have proved themselves their worst enemies. By preventing the experiment of the smaller change they have rendered the greater inevitable. An apt illustration of this fact is afforded by the history of the Established Church in Ireland. The existence of that establishment was not unreasonably looked upon as a grievance by the Catholic majority in Ireland, and it was inevitable that the reformed Parliament should endeavour to remove that feeling. A slight change was effected in 1833 by a reduction of the Episcopate and the introduction of other small reforms.¹ Later, when the commutation of tithes became essential, not only in the interests of the people but also of the tithe owners, a proposal in the direction of partial disendowment was made by the introduction

¹ Walpole, "History of England," vol. iii. p. 151.

of appropriation clauses into the Bill. Twice the Lords rejected the appropriation clauses, and caused the abandonment of the Bill, which was eventually passed in 1838 without them.¹ So far the Lords appeared to have triumphed and to have saved the vested interests of the Church ; but by opposing partial disendowment they made inevitable the more thorough disendowment and disestablishment which was carried into effect, in spite of their protests, in 1869. It is idle to speculate upon the possible results of a measure which has never been brought to the touchstone of practical experience, but it is at any rate within the bounds of possibility that the less stringent proposal might have so far satisfied the opponents of the Church that the more stringent measure would never have become a popular demand ; but the action of the House of Lords prevented this doubt from being solved.

The second and more general disadvantage which the methods of the House of Lords entail is that in many instances they not only do not tend to promote the consummation of inevitable changes by gentle and easy gradations, but they actually prevent it. It is inherent in the genius of the Anglo-Saxon race to proceed slowly with social changes. They like to take a proposed reform in sections ; to feel assured that they have made good their first step on the path of progress before they attempt a second. Their method may be open to all sorts of adverse criticism from the astute logician, but they care nothing for that, so long as they are convinced that no retrograde movement will be necessary. But to this

¹ Hansard vol. xliv. Third Series, c. 1103.

gradual advance the House of Lords opposes itself as a barricade. The first tentative movement in advance is hindered, and the second, and perhaps the third, until the pressure from behind proves irresistible, and the impeding obstacle is swept away. It may be said with safety that many a social reform would have been achieved by much slower steps, and with far less friction and annoyance, had it not been obstructed by the Lords in its incipient stages.

From all these considerations it will appear that the hope for the regeneration of the House of Lords expressed by Sydney Smith in 1832 has never been realised. Dame Partington is Dame Partington still. "She has fought," said the Doctor, "a much longer and better fight than I had any expectation she would fight. Many a mop has she worn out, and many a bucket has she broken, in her contest with the waves. I wish her spirit had been more wisely employed, for the waves must have their way at last ; but I have no doubt I shall see her some time hence in dry clothes, pursuing her useful and honourable occupations, and retaining nothing but a good-humoured recollection of her stiff and spirited battle with the Atlantic." Vain hope ! Many mops and buckets have been worn out and broken since 1832 in the same unavailing contest ; and at the present time, we are assured that our good Dame Partington is sighing for fresh oceans to conquer.

CHAPTER XVI.

THE PROOFS OF THE INDICTMENT.

THE foregoing chapter is in the nature of an indictment in three counts against the methods of opposition to distasteful legislation which are adopted by the House of Lords. To each count has been added at least one illustration to make clear the full gravity of the charge. But allegations of such seriousness cannot fairly be based on isolated instances, and it is now necessary to furnish the further proofs upon which the indictment is based.

The first count has been described as "evasive opposition," by which is meant that the Lords are prone to attempt to defeat or destroy a measure, not by a direct declaration of their opposition to the principle involved, but by raising some side issue with which to veil their dislike from the observation of the public. The latest application of this method may perhaps with advantage be cited first. On July 25th, 1893, Earl Onslow moved, on the second reading of the London Improvements Bill, an evasive motion in opposition to the application of the doctrine of "betterment" contained in that Bill. He asked the Peers to declare that the principle of

"betterment" was one which should be legalised in a public general statute and not in a local act, and the Lords accepted the motion.¹ The Bill was passed by the Lords on August 4th, after it had been amended in committee in accordance with Lord Onslow's motion. The Commons very naturally returned the Bill to the Lords disagreeing to this amendment. But on August 31st the Lords insisted on their amendment, and returned the Bill to the Commons in the form in which it had originally left the Upper House. Now it is a matter of certainty that the House of Lords, being largely a House of landlords, is opposed to the principle of betterment, which would throw a charge upon the landlord which would otherwise fall upon the tenant; but they are unwilling to declare their opposition openly until they are compelled to do so. They therefore sought to defeat the clause by raising a side issue. That the basis of the opposition is a mere quibble, supported because the exigencies of the case demand it, is manifest. Our system of conferring powers on local administrations, since local administrations have been in existence, has been largely one of experiment. It is the cautious English plan of testing the efficacy of a new proposal. Special powers for particular purposes have been frequently granted in local acts to corporations. If the powers prove beneficial they are extended to other districts; if not, they are abandoned. And this form of experimental legislation for localities has been sanctioned by the House of Lords over and over again. Now "better-

¹ Contents, 55; not-contents, 36.

ment" is a principle which has never been brought to the test of practice. According to our recognised methods of local government, it ought to be tested locally before it is applied generally. Yet the House of Lords, for its own evasive purposes, is now declaring that they will not sanction the proposal except in a Bill which will give it universal application.

This is the latest illustration of the opposition which consists in alleging a plausible reason which is not the real reason for effecting the rejection of a distasteful proposal. The case will be supported by the earlier precedents afforded by the Lords' treatment of the Irish Corporations Bill, the Army Purchase Bill, and the Franchise Bill of 1884.

The history of the Irish Corporations Bill is long and complicated, extending from 1835 to 1840, and it is inextricably bound up with the history of Irish Tithe Commutation, which commences in 1833, and was only settled in 1838. The reformed Parliament showed a laudable desire to settle these and other Irish questions, which had long been grievances, and to settle them by extending to Ireland, so far as possible, the measures which were considered beneficial for England and Scotland. But the tithe was not only a grievance, it was an injustice, in Ireland, because it went to the support of a Church which was alien to, if not detested by, the vast majority of the Irish people. It was calculated that the cost of collection exceeded the value of the tithe. In order to enforce it, a Protestant Association had been formed in Ireland for suing defaulters, not by the inexpensive method of summons but by the more costly procedure of taking out a writ

in the Court of Exchequer. Six hundred judgments for insignificant sums with very significant costs were thus obtained, and when it was found difficult to put in execution, a peculiar process known as a "writ of rebellion," invented by English ingenuity for the benefit of the Irish, was taken out, which empowered the seizure of the debtor wherever he might be found.¹ Such methods of procedure by no means increased the love of the Catholics for the Protestant domination, or for the Protestant Church; and the Whigs resolved that any scheme for tithe commutation brought forward by them should provide for the appropriation of a certain amount of the commuted tithe to objects of national advantage. But the Lords were equally determined that no such application of ecclesiastical funds should be made, and in 1835² and 1836³ they rejected appropriation clauses in Tithe Commutation Bills sent up from the House of Commons, thereby securing the abandonment of the Bills. Such was the position of the tithe question when the Corporations Bill was brought forward. An itinerant commission which investigated the affairs of the unreformed corporations had reported the existence of evils similar to those which had been discovered in England: self-chosen corporations which misappropriated public property, with this additional grievance, that none but

¹ Walpole, "History of England," vol. iii. p. 351.

² Hansard, vol. xxx. Third Series, c. 872-936.

³ Ibid. vol. xxxv. c. 446-516. The Irish Church Regulation Act of 1833 had originally contained appropriation clauses. They were withdrawn because the Government feared that the whole scheme would be wrecked in the House of Lords if they were retained (Annual Register, 1833, p. 105).

Protestants were admitted to a share of the spoil.¹ In the debate upon the English Municipal Corporations Bill, O'Connell declared that its chief defect was the omission of the word "Ireland,"² and the Government thereupon promised a Bill to extend local government to that country. This pledge they attempted to redeem in 1835 by passing through the House of Commons a Bill upon the English model, creating elective councils. But the Bill only reached the third reading on August 13th,³ and recognising the impossibility of passing it through the House of Lords in that session, the Government allowed it to drop. It was introduced again early in the session of 1836, and sent up to the Lords. The manner in which the Lords dealt with it will be described fully when the method of "mangling" is illustrated.⁴ It is enough to say here that they so transformed it from its original shape as to render it unrecognisable by its authors, and that after much negotiation the Government were compelled to abandon it.⁵ In 1837 the Bill was again carried through the House of Commons, by largely increased majorities, with some alterations, designed, not to improve the Bill, but to disarm the hostility of the Lords.⁶

The Lords had now to consider what they would do with the Bill. They had previously declared that they would never grant elective councils to Irish municipalities. They could hardly go back from that declara-

¹ Walpole, "History of England," vol. iii. p. 344.

² Hansard, vol. xxviii. Third Series, c. 573.

³ Ibid. vol. xxx. c. 614.

⁴ *Post*, p. 202.

⁵ Hansard, vol. xxxiv. c. 218, 308, 964, 1263.

⁶ Ibid. vol. xxxvi. c. 633, 657, 773; xxxvii. 672, 929, 1043.

tion without an appearance of imbecility, which might easily have been mistaken for the reality. At the same time, feeling on the subject was becoming so strong that a second mutilation would have entailed awkward consequences. The escape from the dilemma seems to have occurred to the Duke of Wellington.¹ The King's speech had mentioned the Corporations Bill, the Tithe Bill, and a Poor Law Bill, as measures for the benefit of Ireland which would be submitted to Parliament. Why should not the Lords say that these measures were all so interdependent that one could not possibly be considered apart from the others?² The suggestion was at once so simple and so statesmanlike that the Lords promptly adopted it. They postponed the committee stage of the Bill from the 5th of May to the 9th of June,³ and then to the 3rd of July,⁴ although the two measures for which they professed to be waiting were being passed through the House of Commons as quickly as possible. Then, as fortune proverbially favours the brave, the King opportunely died, and Parliament was released from all further consideration of measures for that session.

The Bill was sent up once more in 1838 by a newly elected Parliament,⁵ and although it was unaccompanied by the two measures, without which consideration of it had been declared to be impossible, the Lords thought, according to their spokesman, Lord Lyndhurst, that those measures were sufficiently advanced, and that the difficulties of the Peers were somewhat removed. He

¹ Greville, "Memoirs," vol. iii. p. 397.

² Hansard, vol. xxxvii. Third Series, c. 1156.

³ Ibid. c. 599.

⁴ Ibid. c. 1329.

⁵ Ibid. vol. xliii. c. 1070.

then vouchsafed to explain, what had hitherto been an insoluble puzzle, the inseparable connection between the Corporations and the Tithe Bill. He said that Ireland was so agitated upon the Tithe question that, until it was settled, it would be dangerous to grant local government.¹ As the Lords had already caused the rejection of three Tithe Bills in succession, the statement was somewhat audacious. Much of the agitation which existed was of their own creation. The truth probably is that the evasive tactics of the previous year, if they had any object beyond mere evasion, were intended as a threat to the Commons that the Corporations Bill would be mutilated again unless the Tithe Bill was sent up without the appropriation clauses. This supposition is strengthened by the fact that early in 1838 Lord John Russell undertook to withdraw the appropriation clauses from the Irish Tithe Bill,² in order to facilitate the passing of the Corporations Bill. This compromise was agreed to, not because the Government were convinced of its policy, but merely to disarm the opposition of the Lords and to secure the passage of a mutilated measure rather than risk entire failure. The real outcome of the compromise with the Lords was this: the Government undertook to withdraw the appropriation clauses, which would most have tended to allay Irish discontent, in order to persuade the Lords to accept the Corporations Bill, which they had declared should never be passed until that discontent was allayed. But the compromise failed of its intent. The Tithe Bill was passed, but the

¹ Hansard, vol. xlv. c. 150, 151.

² Ibid. vol. xli. c. 1313, 1317.

Lords again mutilated the Corporations Bill, and it was eventually abandoned once again.¹

The second illustration proposed is the history of Army Purchase. In 1871, in consequence of the Franco-German war, and of the reports of two Commissions on the condition of the army, public attention was directed very strongly to the question of army reform. The Government determined to deal with the whole subject, and that determination compelled them to take up, among others, the question of purchase of commissions. The price of these commissions was nominally regulated by Royal warrants, which were supposed to be issued under the authority of an old statute ;² but the custom had sprung up of paying in addition an over-regulation price, which often exceeded the price allowed by the warrant. As the regulation prices of commissions varied from £450 to more than £7,000, it will be seen that the illegal doubling of these prices tended to preserve the army as a happy hunting-ground for the aristocracy. The Government resolved that this abuse should be stopped, and amongst the provisions of their Army Regulation Act were clauses for abolishing purchase, compensating the holders of commissions, and protecting the parties to previous illegal sales from prosecution. The Bill met with the most determined obstruction in the House of Commons, and in order to obtain some portion of legislation during the session upon a very large and

¹ Hansard, vol. xliv. c. 1112. It met with the same fate in 1839, and was only passed in a modified form in 1840.

² 13 and 14 Car. II. c. 3. For the pretty quarrel as to the validity of this statute see Hansard, vol. ccviii. c. 1442-1576.

complex subject, the Government were compelled to drop all clauses except those relating to purchase. In this form the Bill went up to the House of Lords. As it was practically a Bill for the abolition of class privilege, the Peers viewed it with extreme hostility. At the same time they feared to reject it. So the Duke of Richmond was put up to move an amendment to the motion for second reading, which was an echo of an amendment which had been moved and rejected upon the third reading in the House of Commons.¹ It was to the effect that the House was unwilling to assent to the second reading until it had before it the whole of the Government scheme of army reform.² The amendment was ingenious, if not cunning, because it did not reject the Bill; it did not even prevent a second reading; it merely hung up the scheme until a condition had been performed which had been rendered impossible by the action of the Opposition in the House of Commons. But it was evident that it was made and carried merely for the purpose of postponing a scheme which was distasteful to the Lords. There was but a remote connection between the Bill for the abolition of purchase and the abandoned clauses. The Lords were merely attempting to repeat once more the obstructive tactics which they had found so useful in opposing the Irish Corporations Bill. The manner in which the Government defeated these evasive tactics by the issue of a new Royal warrant, abolishing purchase, is a matter of common knowledge. The Bill being thus reduced to a measure for compensating and protecting officers, the House of Lords passed it, after

¹ Hansard, vol. ccvii. c. 1003.

² Ibid. c. 1581.

having vented their displeasure upon the Ministry in a vote of censure.¹

The issue of the Royal warrant for the abolition of purchase was adversely criticised by the Opposition, and also by some of the supporters of the Government, as an unconstitutional exercise of the Royal prerogative. Strictly speaking, it was no exercise of the prerogative at all, but of a power which was supposed to be vested by statute in the nominal chief of the executive. The question before the Ministry was whether the labours of a large part of the session should be rendered fruitless by the shuffling policy of the Lords, or whether, by an unusual, but certainly legal process, they should give effect to the declared will of the House of Commons. Of the two evils they probably chose the less, having regard to the multitude of important measures which were urgently demanding consideration. It was unfortunate that a question which had been deliberately submitted to Parliament should have been decided by another method; but the Lower House had expressed a decided opinion after prolonged debate, and the Upper House had declined to express one until it was in possession of facts which had only the remotest connection with the question before it. Had the Royal warrant been issued in opposition to the declared will of the Commons, it would have been a very different matter. The only permanent interest in the transaction is the evidence which it affords of the slight esteem in which the House of Lords is held by the public. It is inconceivable that such a rebuff could be administered to

¹ Hansard, vol. ccviii. c. 455.

the second chamber of any other civilised state without evoking a general protest. Had it not been for the evasive tactics of the House of Lords, which were not capable of stirring enthusiasm, it might not have been possible in England.

The last illustration is the history of the Franchise Bill of 1884. That Bill, which consisted of only twelve clauses, and which had for its chief object the assimilation of the county franchise to that of the boroughs, had occupied the attention of the House of Commons for four months. The Opposition had concentrated their efforts upon the endeavour to force the Government to bring in a scheme for redistribution of seats concurrently,¹ but that, as the Government declared and as the event proved, would have been an impossibility. The materials for passing such a Bill were not then obtained. But Ministers gave a solemn undertaking to bring in their Redistribution Bill early in the following session, and the Prime Minister had indicated the lines upon which that Bill would be framed.² The Franchise Act eventually passed the third reading in the House of Commons without a division.³

On the motion for the second reading in the House of Lords, Earl Cairns moved the following amendment: "That this House, while prepared to concur in a well-considered and complete scheme for the extension of the franchise, does not think it right to assent to the second reading of a Bill having for its object a

¹ Hansard, vol. cclxxxvi. c. 619.

² Ibid. vol. cclxxv. c. 129; see also Lord Kimberley, *ibid.* vol. ccxc. c. 108.

³ Ibid. vol. cclxxxix. c. 1455

fundamental change in the electoral body of the United Kingdom, but which is not accompanied by provisions for so apportioning the right to return members as to ensure a true and fair representation of the people, or by any adequate security in the proposals of the Government that the present Bill shall not come into operation except as part of an entire scheme.”¹

This amendment, which, after slight modification,² was carried by a majority of 205 to 146, was no doubt framed with extreme skill for use upon the party platform, but if it is carefully examined, it will be seen to contain a contradiction. The intention of the earlier portion is to insinuate that the House did not necessarily disapprove of the principle of the Bill, although a way of escape is reserved from that proposition. The second portion declared that it would not consider that principle unless the proposals for redistribution were before it at the same time. But if that were the real position which the Lords desired to take up, there was no need to oppose the second reading. All they had to do was to pass the Bill, and to insert a clause that it should come into operation at a date to be fixed by the Redistribution Bill. It is true that such an amendment had been proposed in, and rejected by, the House of Commons, but as it is the constant practice of the Lords to endeavour to reinsert amendments which have been rejected in the Lower House, that fact could not have presented any very formidable obstacle to the adoption of such a course. If, on the other hand, the House of Lords objected to the “scheme for the extension of the franchise” then before them, their only

¹ Hansard, vol. ccxc. c. 112.

² Ibid. c. 480.

straightforward course was to reject it upon the second reading without provisos and conditions.

The fact is that the Lords were waiting upon Providence. They hoped that their conditional rejection of the Bill might force the Government to dissolve, and that the consequent general election would give the Conservatives a majority.¹ In that event, the solution of the question would have been left in the hands of their friends, and the "well-considered" scheme of which they might finally have approved would have been a very different scheme from that which was before them. If this plan failed—as it did—it was still open to them to say that the scheme of the Bill was "well-considered," and to adopt it as a last resource. The evasive character of the strategem was so palpable that even *The Times* was constrained to declare that the Peers had by their words "belied their actions," and had incurred "the reasoned condemnation of moderate and thoughtful politicians."²

Concerning this new-fangled doctrine that the House of Lords exists to ensure the nation against misrepresentation by the House of Commons a word or two must be said here. It is contended that the Lords are justified in rejecting any Bill which has not been before the electorate at a general election. The difficulty in admitting such a right consists in the impossibility of ascertaining the condition upon which it depends. It is asserted, for instance, that the question of Home Rule was not an issue upon which the constituencies pronounced a decision in 1892. But those who put

¹ Annual Register, 1884, pp. 153-157.

² *The Times*, July 9, 1884.

forward this proposition are convinced that the electors pronounced definitely and clearly upon that proposal in 1886. It is evident, therefore, that a question concerning which such contradictory opinions can be held is one which must eventually be decided by prejudice, not upon its merits. Such measures as the Lords disapprove of can readily be shown to be measures which the nation has never had an opportunity to consider. But admitting, for the sake of argument, that this is a duty which is imposed upon the Upper Chamber by the constitution, the House of Lords has abundantly proved that it is not a body to which such a power can safely be entrusted. The Act of Union between England and Ireland was a measure which vitally affected the constitution of the two kingdoms, and which had never been publicly mooted when the Parliaments which passed it were elected. Yet the House of Lords had never a word to say in favour of an appeal to the electorate. In 1831, when Lord Grey desired to appeal to the people on the question of reform, the Lords, so far from feeling any parching desire to ascertain the will of the nation, actually attempted, by a trick, to prevent it from being constitutionally expressed.¹ In 1867 they accepted, without any qualms about the feeling of the country, the very radical Reform Bill brought forward by Lord Derby's Ministry, although the rejection of the Bill of Lord Russell's Government in the previous year might have afforded a strong argument, had their Lordships desired one, that the mind of the electorate was not altogether made up upon the subject. But when Mr. Gladstone's Franchise Bill

¹ *Ante*, p. 146.

had passed the Commons, the Lords suddenly became curiously alive to the constitutional duties which they owed to the nation. The activity, however, was only spasmodic. With the advent of Lord Salisbury's Government the Lords fell again into a lethargy. They passed the Coercion Act without any searchings of heart as to the possible desires of the electors, although a large number of the members of the majority in the House of Commons had pledged themselves to their constituents against any exceptional criminal legislation for Ireland, and although the Bill was made permanent, instead of being, like its innumerable predecessors, of temporary application only. And later on, in 1891, they accepted the Free Education Act, from the principle of which the Government had always been supposed to be adverse, without considering for a moment whether, as constitutional defenders of the right of the nation to express its opinion upon a new course of policy, it might not be well, at any rate to postpone the decision of such a question until after the impending general election. And now, in 1893, it seems that they are alert again, and are loud in their protestations that they, and they alone, are the defenders of a deluded nation against being misrepresented by the House of Commons which that nation has so recently elected.

Such a record, which is illustrative merely, and by no means exhaustive, effectually disposes of the claim of the House of Lords to exercise impartially so great and so solemn a prerogative. The question whether their action was wise or unwise in relation to any of the particular measures which have been referred to is not the ques-

tion at issue. It is whether, assuming that the function of the Lords in the constitution is to insure the free expression of the opinion of the nation on any given policy, they exercise their power without fear or favour. That is demonstrably not the case. When one of the great parties in the state is in office the Lords act upon the presumption that the measures of that party embody the will of the electorate: when the other party is in power they act upon the reverse presumption. It is the very negation of an ideal Upper Chamber, which, as Earl Russell, at the end of his long political career, and as the outcome of his vast political experience, desired, should "sympathise with the people at large, and act in concurrence with the enlightened state of the prevailing wish."¹

¹ "Recollections and Suggestions," p. 110.

CHAPTER XVII.

THE PROOFS OF THE INDICTMENT CONTINUED.

THE preceding chapter has been devoted to the subject of the evasive tactics of the House of Lords because those are the tactics which have been most productive of unnecessary legislative delay and of political irritation. It is now necessary to turn to the second and third counts of the indictment : opposition by the process of mutilation, and the oppression of small minorities.

The former method has already been incidentally illustrated. The fate of the Bribery Bill of 1834 has been cited, and the attempt of the Lords to mangle the Reform Bill of 1832 has been told in greater detail. The history of the mutilation of the Irish Tithe Bills has also been narrated—a mutilation for which the Irish Church had only temporary reason to thank the Lords ; and the attempt to render the Ballot Act nugatory by making the secret vote optional has been described. One or two further illustrations must now be given.

Perhaps one of the most absurd of the mutilations which the Lords have perpetrated is that which they inflicted upon the Irish Church Regulation Act of 1833.

The main objects of that Act, in addition to the reduction of the number of the Bishoprics, were the abolition of the Vestry Cess, which was the equivalent of the English Church rate; the better management of Church lands; and the augmentation of small livings. For these purposes Ecclesiastical Commissioners were appointed, and among the powers conferred upon them was a power to suspend clerical appointments in parishes where service had not been performed for three years, and to carry the income to the general fund created for the purposes of the Act. Such a proposal was no less moderate than prudent. A three years' suspension of service was fairly conclusive evidence that a parish contained no Protestants, and therefore could need no ministration from a clergyman. Yet the Archbishop of Canterbury saw fit to propose, and the House of Lords saw fit to carry, an amendment which provided that the income from the deserted parish should be applied, in the first instance, in building a church for that parish which no worshipper would attend, and a glebe house which no incumbent was destined to inhabit.¹ After this amendment, so contrary to the spirit and the intention of the Bill, had been carried, Earl Grey was in doubt whether he would persevere with the Bill or resign. He eventually decided in favour of the former alternative.²

It has already been pointed out that it was the desire of the reformed Parliament to apply, in the spirit of the Act of Union, those remedies for the redress of Irish

¹ Hansard, vol. xix. Third Series, c. 1231.

² Annual Register, 1833, p. 139; Hansard, vol. xx. Third Series, p. 1.

grievances which they found appropriate for the grievances of England and Scotland. The Irish Corporations Bill was therefore framed upon the same principles as the English Municipal Reform Act, with such alterations as were necessary to adapt it to Irish conditions. It proposed to abolish the old corrupt corporations, and to substitute for them a council elected by inhabitants with a £10 qualification in the larger towns, and a £5 qualification in the smaller,¹ which was to be directly responsible for the management of local affairs.

The Bill was strenuously opposed by the party in the House of Commons which followed the leadership of Sir Robert Peel. The chief cause of opposition was avowedly the fear lest the Catholic majority should gain a predominating influence in the new councils. It was solemnly contended that the persistent exclusion of the Catholics from the old corporations had so irritated them that they would not be capable of acting justly if they were now entrusted with power—an argument which involves the startling proposition that the inevitable results of an act of injustice afford the justification for its continuance. Sir Robert Peel did not oppose the second reading of the Bill, for it was impossible to contend that the corporations did not stand in need of reformation, but he struggled hard against the creation of the elective councils.² In this, however, he was unsuccessful, and the Bill went up to the House of Lords practically unaltered.

On going into committee in that House, Lord Fitz-

¹ Hansard, vol. xxix. Third Series, c. 1304 ; xxxi. c. 1042.

² Ibid. vol. xxxii. Third Series, c. 102.

gerald and De Vesci moved an instruction to the effect that the committee was to abolish the old corporations and to make such arrangements as may be necessary "for securing efficient and impartial administration of justice, and the peace and good government of the cities and towns of Ireland."¹ These fine sentiments were designed to throw a decent veil over the intention of the House of Lords to convert the Bill into a Bill for carrying out the wishes of the minority in the House of Commons. The instruction was carried by a majority of eighty-four.²

The work of demolition which the House of Lords effected in committee was shortly summarised by Lord John Russell in a speech upon the amended Bill when it was returned to the House of Commons. He told the House that the Bill originally contained 140 clauses. The Lords had rejected in substance no less than 106 of these, and had introduced 18 new clauses, and that "of the whole purport and intention of the original Bill, little is to be found in the Bill which has now come down to us."³

The practical results of this demolition were aptly described by Lord Lansdowne. "It seemed fit to the majority of your Lordships," he said, "carefully to take out of the Bill all those portions of it which gave life and existence to the new corporations, while you have been pleased to retain all that distinguished life in all existing corporations. It ought to be called 'A Bill for abolishing the corporations of Ireland, and making the Lord-Lieutenant of Ireland for the time being sole corporation thereof.'"

¹ Hansard. vol. xxxiii. Third Series, c. 260.

² Ibid. c. 306.

³ Ibid. vol. xxxiv. c. 218.

These words accurately describe the effect of the Lords' alterations in the Bill. The result was arrived at by the following processes :—

1. The Lords accepted the clause abolishing the old corporations.

2. They preserved the rights of freemen, and maintained a large number of officials in possession of their places.

3. They rejected the clauses establishing elective councils.

4. They inserted clauses empowering the Lord-Lieutenant to appoint commissioners in the different localities to carry out the provisions of the Act.

Such was the message of peace and goodwill which a prudent Upper Chamber thought fit to send to a disaffected Ireland. At a time when the people of England and Scotland were being entrusted with the management of their local affairs, Ireland was told with no uncertain voice that so far as the Lords were concerned, "the sister island" should not be a partaker in those benefits. On the contrary, all vestiges of the possibility of local self-government were to be stamped out, and the towns and cities of the country were to be delivered over, bound and helpless, to the centralised and unsympathetic administration of officials appointed by the British Government.

The usual forms of amendment, stating of reasons, and conferences, were gone through by the two Houses, but the Lords declined to give way, and at last Lord John Russell was compelled to move "that the Lords' amendments be considered this day three months." In moving this resolution he said, with regard to the

rejected principle of local self-government, "That one principle is the very principle which gave the Bill its vigour and vitality—which made it consistent with the constitutional freedom of these realms—that principle from the operation of which we expected to give content to the people of the towns of Ireland; and when that principle is refused, and when it is clearly stated that no concession will be made on this point, I can only submit that it is unnecessary for us to take any further time for consideration."¹

The action of the Lords in regard to the Corporations Bill has probably been fraught with more serious consequences than any other act of misguided folly which they have committed. It is true that after a long struggle a Bill for the nominal reform of the Irish Corporations was passed by virtue of a compromise in 1840.² But it was passed by a Government which was tottering towards its fall, and which was not in a position to insist upon the more generous treatment which had been previously advocated. The measure was framed more in accordance with the wisdom of the Lords than with that of the Commons, and Ireland obtained a measure of local government which was little more than a fraudulent imitation of the system which was granted to England and Scotland.³ The result was inevitable. The Irish, balked of their reasonable desire to manage without extraneous interference their municipal affairs, concentrated their hopes upon larger issues,

¹ Hansard, vol. xxxiv. Third Series, c. 1068.

² 3 and 4 Vict. c. 108.

³ "The most intolerant Protestant might have reflected with shame on the narrow measure of justice which had been meted out to Ireland" (Walpole, "History of England," vol. iii. p. 513).

the outcome of which is now the great political question of the day. Just as the refusal of the Lords to entertain the appropriation clauses resulted in the disestablishment of the Irish Church, so their refusal of a generous measure of local government has resulted in the demand for Home Rule. It is not contended that the granting of the minor demand in either case would have certainly precluded the growth of the greater, or that it would have been well if such had been the result. But it is contended that, whether the demand for Home Rule was inevitable or not, true wisdom would have dictated the passing of a generous measure of local self-government for Ireland. In the one case it would have been a prudent preparation for greater administrative responsibility; in the other, a politic concession to the feeling which inspired the movement. If, perchance, the concession would have obviated the greater demand, then those who now oppose Home Rule should remember that it is to the House of Lords that they are very largely indebted for its existence.

Other illustrations of Bills defeated by the mangling process might be cited, and cases where the Government has accepted mutilating amendments rather than sacrifice a Bill entirely, are more abundant. The history of legislation with regard to Dissenters' disabilities teems with these, and through the long series of Acts relating to Irish land, the mutilating trail of the House of Lords can easily be followed. Indeed, if the causes of disaffection in Ireland during the nineteenth century were carefully traced to their source, it would be found that a large proportion of them were directly due to the "prudence and foresight" of the Hereditary Chamber.

The third count in the indictment is a charge against the House of Lords of oppressing small minorities by resisting legislation in their favour. This will be illustrated by four cases of undoubted injustice.

Among the many anomalies of our criminal law in the earlier years of the century was a rule which precluded the counsel of a prisoner charged with felony from addressing the jury on behalf of his client. Prisoners charged with misdemeanour or treason were allowed this privilege, which was denied to those of the intermediate class of offenders. This anomaly was productive of great absurdities. Some offences were misdemeanours when committed for the first time, and felonies if committed the second. Lord Denman has stated that in a case tried before him at Liverpool a prisoner was charged with "uttering a counterfeit sixpence : it was only a misdemeanour, and counsel addressed the jury. The very next case was a charge of uttering two sixpences. This was a felony, and counsel was not allowed to address the jury, though the witnesses and the evidence were the same in both." ¹

In the unreformed House of Commons of 1824 an attempt to remedy this injustice was defeated ; but in 1834 a Bill for the purpose was passed. It was sent up to the House of Lords, which contemptuously dropped it. In 1835 the Bill was sent up again, and on this occasion it was disposed of in the Upper House by relegation to a select committee. It was not until the third attempt, in 1836, that the Lords were induced to pass it ; and then only upon condition that the provision

¹ Annual Register, 1836, p. 165. This is not reported in Hansard.

giving the prisoner's counsel a right of reply should be omitted.¹

The reasons which induced the opponents of this minute reform to obstruct the Bill are reasons which, if valid, would prove that the addresses of counsel were unnecessary in the defence of any prisoner. It was alleged that the judge was the prisoner's advocate; that the personal appeal of the prisoner would have more weight with the jury than that of a feed lawyer; and that the evidence to obtain a conviction should be so clear that argument would be rendered superfluous. It must be presumed that these contentions weighed sufficiently with the Peers to induce them to postpone the Bill for two sessions.²

The second case is the rejection by the House of Lords, in 1835, of Lord Clanricarde's Roman Catholic Marriages Bill. An old Irish statute provided that the marriage of a Roman Catholic with a Protestant might be invalidated if it were called in question within twelve months of celebration, and that "any person shall be deemed a Protestant who has been so at any time within twelve months before the celebration of the marriage."³ This iniquitous measure might have been described officially as "an Act for facilitating seduction, and the

¹ Hansard, vol. xxxiv. Third Series, c. 760, 1061.

² "So jealous were the founders of the system of the power of professional rhetoric over the affections of their favourite class of judges—so jealous (always supposing them to have consulted reason on the subject—which very likely they never did), that by putting a gag into the mouths of the advocates, they determined to give the same sort of security to their judges that Ulysses, when among the Syrens, gave to his companions—by putting wax into their ears" (Bentham, "Works," vol. vi. p. 372).

³ Hansard, vol. xxx. Third Series, c 243.

appropriation of other people's property by Protestants." It was open to a man to feign conversion to Catholicism, to contract a marriage with a Catholic, and then to annul it on the ground that he was a Protestant. Attendance at a Protestant church once during the year previous to marriage was sufficient proof.¹ The operation of the Act with regard to property may be illustrated by a case cited by Lord Clanricarde: "A gentleman, who had been a Protestant, married a Roman Catholic lady, with whom he got a large fortune. With part of this property he purchased land ; he died intestate, and the widow claimed her dower. The-heir-at-law, however, stepped in, and having proved that the husband had been a Protestant within twelve months of his marriage, the widow lost the whole of the property."² It may seem hardly conceivable that such a monstrous law, which placed a premium on immorality and fraud, and which operated to bring innocent women to shame and innocent children to bastardy and penury, should have had a place upon the Irish statute book within the last sixty years, but it is less conceivable that the House of Lords should decline to repeal it. Lord Clanricarde's Bill was rejected by a majority of twenty-six,³ on the ground, apparently, that it would operate to undermine the Protestant ascendancy, and to sap the foundations of the Established Church in Ireland.⁴ And yet we are surprised that the Irish have not recognised the equity and benevolence of the English rule.

The third case of injustice to those who were politically powerless in self-defence was also a refusal to

¹ Hansard, vol. xxx. Third Series, c. 243.

² Ibid. c. 244.

³ Ibid. c. 255.

⁴ Ibid. c. 246.

protect women from one of the greatest cruelties which can be inflicted upon them. According to the old law the father was the legal guardian of his children, and this doctrine was carried to the logical extremity that, if he so chose, he could debar his wife from all access to them. The law was so strictly enforced that, even if the father were so depraved that his wife was unable to live with him, his right to deprive her of her children was inviolable. As Sergeant Talfourd said, when he introduced the measure designed to mitigate this cruel grievance: "A man who may be drunken, immoral, vicious, and utterly brutalised, may place his wife in this dilemma—'You shall continue to live with me or you shall be deprived of your children.' . . . The law sternly refuses to listen to the pleadings of natural sympathies, and denies the mother even the sight of her children."¹

Lord Lyndhurst illustrated the cruelty of this barbarous law by the case of Mrs. Emanuel. That lady, he said, "was, before her marriage, in possession of about £700 a year, which, on the marriage, was settled to her own use, with certain contingencies. The husband received £2,000, but not being satisfied with this settlement of the property, he persecuted his wife to make her will in his favour. She had the firmness to refuse. He then threatened to take her out of the kingdom, but this was barred by a covenant in the settlement. He next threatened to take her child, an infant scarcely five or six months old, out of the kingdom, and he succeeded in tearing the child away from its mother and placing it in the custody of a hireling nurse. Application was made to the Court on behalf of the wife for access to

¹ Annual Register, 1838, p. 182.

the child, and although the Court admitted that nothing could be more infamous or base than the motives by which the father had been actuated, still the mother had no right to interfere, as the father had hired a nurse as a substitute for the mother, and as the child was not suffering in health the Court could not interfere and afford the redress sought."¹

The Bill which the House of Commons passed in 1838 to prevent such heartless cruelty was but a partial and meagre remedy. It proposed to give the Courts power to make an order for the mother to have access to the child in such cases, but not to give her custody of the child. And this Bill the Lords rejected by a majority of two in a House composed of twenty members.²

The arguments adduced in favour of the rejection of the Bill brand this crime, for crime it certainly was, with blacker infamy. It was alleged that, if it passed into law "it would open the door to the most frightful changes in the whole of this country . . . and in the whole of the *principles* upon which the law of husband and wife was founded," and that "floods of immorality would be sure to overthrow the institution of marriage."³ A still more contemptible argument was derived from the fact that women laboured under many other legal disabilities, and that it was therefore ridiculous to single out this particular grievance for repeal. No more repulsive speech was ever delivered in any senate than that of Lord Brougham in which he propounded this contention. "Could anything be more harsh or cruel,"

¹ Hansard, vol. xlv. Third Series, c. 744.

² Ibid. c. 791.

³ Ibid. c. 780.

he said, "than that the wife's goods and chattels should be at the mercy of her husband, and that she might work and labour and toil for an unkind father to support his family and children, while the husband repaid her with harshness and brutality, he all the while revelling in extravagance and dissipation, and squandering in the company of guilty paramours the produce of her industry? The law is silent to the complaints of such a woman." ¹ And because these things are so, was the contention of the noble and learned Lord, it is preposterous to come to us and ask us to declare that such a man shall not have her children also. And these doctrines commended themselves to the majority of the few statesmen of "prudence and foresight" who deigned to come down to the House of Lords and consider the subject.

The most persistent and uncompromising of all the oppositions in which the House of Lords has indulged is that which was directed against the removal of the civil disabilities of the Jews. During a period of twenty-five years, in which six general elections took place, the Lords, on no less than six occasions, refused to allow the law to be so altered as to permit a Jew to sit and vote in Parliament; ² and for a shorter period, until 1845, they declined to remove even those municipal disabilities which had the effect of compelling a Jew in certain cases, after having been chosen for some office such as sheriff against his will, to pay heavy fines

¹ Hansard, vol. xlv. Third Series, c. 780, 781.

² 1833, Lords' Journals, vol. lxv. p. 544; 1834, *Ibid.* vol. lxvi. p. 663; 1836, *Ibid.* vol. lxviii. p. 841; 1841, *Ibid.* vol. lxxiii. p. 482; 1848, *Ibid.* vol. lxxx. p. 313; 1853, *Ibid.* vol. lxxxv. p. 225.

because he would not perjure himself by taking the necessary oaths "upon the true faith of a Christian." And the refusal to remove the Parliamentary disabilities of Jews was continued until 1857, long after the period when Rothschild had been returned in conjunction with the Premier, Lord John Russell, for the city of London,¹ and Alderman Salomons had been elected for Greenwich.²

The reasons for this persistent denial of the rights of citizenship to the Jews, so far as they can be extracted from the voluminous speeches which were delivered in the House of Lords in opposition to the various Bills, appear to be the following :—

1. That the Jews hoped to return at some future time to the land of Palestine.³

2. That their moral and intellectual capabilities did not justify the removal of the disabilities.⁴

3. That, not being Christians, they were not entitled to take part in the government of a Christian country.⁵

4. That they were divested of those natural feelings which inspire British subjects.⁶

5. That they were themselves indifferent to the question.⁷

6. That the Bill was a tissue of blasphemy and impiety.⁸

It was for such reasons as these, concerning the "prudence and foresight" of which the reader must be left to form his own judgment, that the House of Lords

¹ 1847.

³ Hansard, vol. xcvi. c. 1347.

⁵ Ibid. c. 726.

⁷ Ibid. vol. xxiv. c. 727.

² 1851.

⁴ Ibid. vol. xxiv. c. 723.

⁶ Ibid. vol. xcvi. c. 1343

⁸ Ibid. vol. xx. c. 235.

for a quarter of a century resolutely refused to allow the House of Commons to remove one of the last stains of religious inequality from our statute book. The manner of their surrender in 1858, when surrender became inevitable, was typical. In that year the second reading of an Oaths Bill, which contained a clause which would have effected the removal of the Jews' disabilities, was carried in the House of Lords,¹ but in committee the clause which would have struck out of the oath the words "on the true faith of a Christian" was rejected.² This was practically a rejection of the Bill so far as the claims of Jews were concerned. The Commons at last resolved to fight the battle out. Lord John Russell moved to disagree with the Lords' amendment, and the motion was carried by a majority of 113.³ The usual committee was appointed to prepare reasons for disagreement, and Baron Rothschild, who had never taken the oath or his seat, was nominated a member.⁴ The Lords, seeing that the Commons were at last in earnest, prepared for themselves a way of retreat from a position which was bound to become untenable. They again rejected the clause, and they solemnly prepared reasons for the rejection for the enlightenment of the House of Commons; but at the same time they brought in and passed a Bill of their own which empowered either House of Parliament to modify the oath which was tendered to its members⁵—a method of doing a thing whilst retaining all the appearance of not doing it which must have been very

¹ Hansard, vol. cxlix. c. 1447.

² Ibid. c. 1794.

³ Ibid. vol. cli. c. 347.

⁴ Ibid. c. 440.

⁵ Ibid. vol. cli. c. 1265.

precious to the House of Lords. Lord John Russell accepted this solution of the difficulty ; the Bill was passed, and the Commons' oath was altered accordingly for administration to Jews. As a monument to the folly of the policy which the House of Lords had adopted on this question, the House of Commons had the satisfaction of passing the following resolution without a division : " That this House does not consider it necessary to examine the reasons offered by the Lords for insisting upon the exclusion of Jews from Parliament, as by a Bill of the present session, entitled ' An Act to provide for the relief of her Majesty's subjects professing the Jewish religion,' their Lordships have provided means for the admission of persons professing the Jewish religion to seats in the Legislature." ¹

The methods of dealing with legislation which the House of Lords is prone to adopt have now been illustrated, not by isolated instances but by cumulative evidence. It must be left to the reader to judge whether they do credit to a branch of the Legislature of a great nation which prides itself upon its civilisation and enlightenment. Only one further point for consideration remains, and that is, what plan of reform should be adopted to bring this effete second chamber into harmony with modern ideals and modern requirements.

¹ Hansard, vol. cli. c. 1903.

THE PROPOSED REFORM.

CHAPTER XVIII.

THE PROPOSED REFORM.

THE final section of this inquiry—the question of Reform—divides itself into two heads. It is necessary to consider, first, the nature of the powers which a second chamber ought to possess, and secondly, how a chamber, possessing such powers, may best be constituted.

The history of the House of Lords has revealed facts which are of importance in dealing with this subject. That history shows that there has been a persistent numerical increase in the membership of that House until it has become the most unwieldy upper chamber in the civilised world, and thus the sole constitutional check upon its action, the creation of new members, has become incapable of application. As Lord Rosebery said in 1888, "Hardly a squadron or a regiment of Peers would redress the balance in certain contingencies."¹ It also shows that since 1832 that persistent numerical increase has been accompanied by as persistent a decline of influence. This decline has been due to the gradual establishment of the House of Commons upon an ever-extending democratic basis.

¹ Hansard, vol. cccxxiii. c. 1552.

The moment the representation of the people was released from the overshadowing influence of the aristocracy the mediæval character of the House of Lords stood revealed. And this anachronism was the more accentuated because, during a long period previous to the first Reform Acts, that House had been gradually divesting itself of so much of a representative character as it had ever possessed, and had been drifting into the position of a body of men whose sole claim to exercise the functions of legislation was the accident of birth, or the irresponsible selection of the Crown and a Minister. In early times, as we have seen, these were by no means the essential qualifications of the great Baron. He exercised his powers by virtue of his performance of great state duties, and it was only because, and so far as, the burden of these duties descended to his heir, that the heir succeeded to his rights as a legislator. Heredity was originally the consequence, not the essence, of the qualification for membership of the House of Lords. Apart from this fact, until the time of the Reformation, the large majority of the House were life members.

But the discharge of those duties which had originally created the right passed, on account of the growing complexity of civic life, by slow degrees into other hands, until the only obligation of the Peers towards the state was represented by a commuted money payment in regard to services which were no longer demanded of them. This obligation was repudiated at the time of the restoration of the Stuarts, and was cast upon the nation. Thus by a trick the Lords relieved themselves of the last vestige of those duties which had

been their original claim to seats in the Legislature; but they maintained unimpaired the doctrine of hereditary succession to those seats. From that time the tendency of the House of Lords was to become a machine for controlling and keeping in check the House of Commons in the interests of the aristocracy, until their power in that direction was shattered by the Reform Acts of 1832.

From that date the object of the Lords has been, since absolute control was impossible, to hamper and oppose the democratic tendencies of the Lower House by all means in their power. The methods by which they have attempted this opposition have been analysed. No one will pretend that they are methods which are likely to bring credit to any legislative chamber. They are due to a desire to assert an influence which has been lost, and which can never be regained. The co-ordinate authority of the House of Lords with the House of Commons is now a mere fiction of the constitution—a fiction which even the most uncompromising adherent of the Upper House does not pretend to maintain has any basis in reality. The utmost prerogative which is now claimed for it is to check rash and ill-considered legislation, by giving every question full discussion from every aspect; and to make certain that any proposal of the House of Commons is really an expression of the will of the nation. With regard to the former function, Lord Salisbury has told us how incapable the Lords are for that purpose. A House which is unequal to the discussion of questions "having reference to the health and moral condition of the people" can hardly be

considered competent to check ill-advised legislation on that large class of subjects. Lord Salisbury also told the Lords upon a subsequent occasion that they were fully equal to the task of discussing questions relating to the Church, Law, and the Land; but in dealing with "finance, mercantile matters, engineering matters, and a number of other departments of thought and activity, they were not sufficiently well manned."¹ If these statements be correct—and Lord Salisbury may surely be accepted as a witness against the competence of the body of which he is so distinguished a member—the question of the capacity of the Lords to deal with the greater number of questions which are liable to come under their consideration needs no further discussion.

But another problem remains for solution, and that is, how far a second chamber is necessary for the purpose of preventing rash and ill-considered legislation. Confining the question to the needs of our own country, it may be unhesitatingly answered that the necessity for such a check is not very urgent. The ingrained, and, fortunately, ineradicable conservatism of the inhabitants of the United Kingdom is in itself a preventive against dangerous experiments in legislation. The mills grind slowly, but they grind exceedingly sure. One generation rarely witnesses the achievement of a reform which is first proposed to it. The earliest note of change is sounded by some small band of enthusiasts, and we content ourselves for a long period with the luxury of abusing them. They are

¹ Hansard, vol. cccxxvii. c. 494.

faddists, quacks, traitors, with or without adjectives of a more or less imprecatory character. In process of time the advocates of the despised proposal obtain a representation in Parliament, and the question is doggedly brought forward, and as doggedly defeated for another prolonged period. In the meantime the slow English mind is becoming gradually permeated with the idea that there may after all be some grain of wisdom in the proposal which it has hitherto been so active in decrying. The cause gains fresh adherents in Parliament, and is accorded the dignity of being shelved by reference to a commission of experts who examine it critically and exhaustively, with far more effect than can be possible in an assembly constituted in such a haphazard fashion as the House of Lords. It is not until most or all of these obstacles have been successfully surmounted that the proposed change crystallises itself into the shape of a Bill which passes the House of Commons. To subject such a Bill to further scrutiny before passing into law on the ground that its provisions may be rash and ill-considered is analogous to the very superfluous process of gilding refined gold.

The history of the slow growth of the demand for Parliamentary reform has been told with some detail for the purpose of illustrating the deliberate and cautious manner in which the English as a people proceed in their demands for change. Lest that should be deemed a special and isolated instance, it is well to cite other cases to prove that this excessive caution is the rule and not the exception.

Until the passing of the Reform Acts the education

of the people had been conducted entirely by voluntary effort. Men of foresight had long been pointing out that, if the work was to be done effectually, the Government must take some share of it. In 1833 the Government, in spite of considerable opposition, took the first timorous step in advance. Parliament made a grant of £20,000 in aid of national education.¹ In 1839 the grant was increased to £30,000, and it was to be administered by a committee of the Privy Council instead of by the Treasury, upon terms which would admit Roman Catholic schools to a share in it.² This minute instalment of religious liberty was vigorously denounced by the House of Lords. The Archbishop of Canterbury proposed and carried, by a majority of 111, a series of resolutions condemning the scheme, which were embodied in an address to the Crown, praying that "Her Majesty will give directions that no steps shall be taken with respect to the establishment or foundation of any plan for the general education of the people of this country, without giving to this House, as one branch of the Legislature, the opportunity of fully considering a measure of such deep importance to the highest interests of the community."³ In 1843⁴ and again in 1853⁵ attempts were made by the Governments of the day to legislate upon the subject, and it had been inquired into by more than one Royal Commission. It was not until 1870 that an Education Act was passed by the Commons, and sent up to the Lords for consideration. The impetus which

¹ Hansard, vol. xx. Third Series, c. 733.

² Ibid. vol. xlviii. c. 731.

⁴ Ibid. vol. lxix. c. 530-70, 1329.

³ Ibid. c. 1255.

⁵ Ibid. vol. cxxv. c. 722.

eventually carried that Act through the House of Commons first became a force in the early years of the century.

The emergence of the demand for the ballot was quite as deliberate. It appears to have been mooted in the House of Commons so early as 1708. It was again advocated in 1815, and throughout the long and weary fight for reform, the more advanced reformers consistently maintained that the ballot was essential to secure the full benefits of the proposed change. Lord John Russell apologised for the absence of any provision for the ballot in the Reform Bill of 1831. In 1833 Mr. Grote took up the question, but his proposal was rejected by the House of Commons.¹ After that date annual motions were made in favour of the ballot. In 1851 its advocates first succeeded in obtaining leave to bring in a Bill. It was one of the main points insisted on in The People's Charter; and in 1868 the subject was investigated and reported upon by a committee under the presidency of Lord Hartington.² It was not until 1871 that a Bill for the purpose was sent up to the House of Lords, which was rejected on the ground of the lateness of the session.³ The Bill was sent up again in 1872, and it was then that the Peers, in their character of watch-dogs against hasty legislation, attempted to make voting by ballot optional and insisted on limiting the operation of the Act to a period of seven years. That their excessive caution in that respect was unnecessary has been fully proved by events. Voting by ballot is now so essentially a part

¹ Hansard, vol. xvii. Third Series, c. 607.

² Ibid. vol. cxviii. c. 356.

³ *Ante*, p. 174.

of our electoral system that the present generation hardly remembers the existence of any other.

Illustrations of this extreme deliberation in effecting change might be multiplied indefinitely. It is a virtue which is apt to pass into a fault ; the sloth of the nation in recognising the inevitableness of a reform being often the cause of the perpetuation of a scandal. The House of Commons is a body which does not as a rule respond to the demand for legislation until that demand is clear and unmistakeable, and until the subject upon which legislation is demanded has been exhaustively examined. In such circumstances the necessity for the imposition of a further check upon the deliberate conclusions of the Lower House is reduced to a minimum, if indeed the check itself is not a superfluity.

A survey of the history of legislation during the last sixty years affords only one instance in which the House of Commons departed from its habitual deliberation, and sent up a Bill to the House of Lords in a panic. That Bill was the Ecclesiastical Titles Bill of 1851. In the year 1850 the Pope had issued a bull partitioning England into dioceses, which were to be placed under Bishops of the Church of Rome bearing local territorial titles. Hitherto the Roman Catholic Church in England had been governed by Vicars Apostolic, who indulged in the luxury of fancy titles. In these present days, when the name of "The Archbishop of Westminster" has become endeared to all classes and to all creeds, it is impossible to realise the storm of indignation with which this innovation was received. Lord John Russell, whose Protestantism was of the type which is prone to frenzy when the Catholic

Church is so much as mentioned, fanned the flame of bigotry by publicly addressing a violent letter on the subject to the Bishop of Durham.¹ That letter was published on November 4th. On the following day the whole country vindicated the purity of its Protestantism with fireworks and guys, the immortal Fawkes being for the occasion supplanted by the Pope and Cardinal Wiseman.

When Parliament met in 1851 Lord John Russell brought in a Bill imposing penalties upon the assumption of territorial titles by the Catholic Bishops.² This Bill, after undergoing various modifications, passed the second reading in the House of Commons by a majority of 343,³ and the third reading by a majority of 217.⁴ The House of Commons had, for once, legislated in a panic. The evil from which the House of Lords, according to one accepted theory of its functions, is specially designed to guard the nation, had arisen. It was an unique occasion for the Peers to justify their existence as a legislative body. From the calm of their non-elective chamber they should have been capable of perceiving that the storm which was raging outside was transient; that the House of Commons had mistaken a temporary outburst of religious bigotry for a mature and well-reasoned conclusion; and, above all, they might have remembered the fact, which occurs so

¹ Molesworth, "History of England," vol. ii. p. 350.

² Hansard, vol. cxiv. c. 703.

³ Ibid. vol. cxv. c. 618.

⁴ Hansard, vol. cxviii. c. 240. Earl Russell has declared that the Bill was passed merely as a protest, and that the Government never intended to enforce its provisions ("Recollections and Suggestions," p. 256). If this be true it only adds another element of futility to the performance.

conveniently to their memories when necessary, that the electorate had never had an opportunity of pronouncing upon the measure. But so far from rejecting it, or even modifying its provisions, they passed it without a single alteration,¹ and only twenty-one Peers are found protesting against it.² From the moment the Bill received the Royal assent it became a dead letter, to be repealed, almost unnoticed, and certainly unregretted, in 1871.³

It is therefore evident that a second chamber, at any rate in the United Kingdom, is not essential to check rash and ill-considered legislation, and that on the rare occasions when such a need arises the House of Lords is not to be trusted to fulfil one of the important functions for which it is alleged to exist. Another argument against the absolute necessity for a second chamber is derived from the fact that, with regard to one large and complex branch of the functions of government, our present system is practically unicameral. In all those questions which relate to the levying and the incidence of taxation and to the appropriation of supplies, the House of Lords is powerless either to initiate or to amend legislation, and since the rejection of the Paper Duties Bill of 1860 they have been rendered practically incapable of rejecting it. Now there is no subject which affords greater scope for injustice and rashness than that of the raising and application of revenue, but complaint has never yet been made that the House of Commons abused its powers in that respect, nor has the lack of

¹ Hansard, vol. cxviii. c. 1530, 1676.

² Ibid. c. 1676.

³ Ibid. vol. ccviii. c. 142.

a second chamber to check its policy in such matters been ever put forward as a grievance or a drawback. If the House of Commons can thus be trusted to deal with the great question of finance, it surely stands in need of no very severe paternal supervision in other classes of legislation.

It may appear that these arguments, if carried to their legitimate conclusion, prove too much; that they tend to show that the second chamber should be abolished. That, from the point of view of strict logic, may be true. But it is necessary to remember that a large number of persons are not convinced by them. They hold the opinion that a second chamber prevents, by its mere existence, any attempt to commit injustice in legislation: that were it not for the restraining fear of a second chamber, temporary majorities would use their power unscrupulously. The view of such persons is that a second chamber holds the same relation to politics as the coastguard service holds to the customs. Its true force consists in its existence rather than in its activity. Yet even these would readily admit that a coastguard service with independent notions on the question of contraband would be an anomaly. They think also that without the restraining check of a second chamber, the legislation of one party in the state would be apt to be repealed by their opponents when the latter obtained power; and that thus one conspicuous advantage of our constitution, which ensures that the step in advance, once made, shall be acquiesced in by all parties, would be sacrificed. There is considerable force in this contention. Moreover, as we have in-

sisted more than once, the English do not effect their reforms upon the basis of logic, but upon that of expediency. They prefer rather to adapt old instruments to new purposes than to forge brand-new tools the utility of which is untested. The abolition of the House of Lords is outside the range of practical politics: its reform is well within the region of the possible.

It is necessary, therefore, before examining any methods of reconstruction, to consider the nature and limit the powers with which a second chamber should be entrusted. And first of all it must be recognised that a second chamber in a modern state should not be a chamber of co-ordinate jurisdiction, but primarily a court of review and of suggestion. It should be a chamber in which political partisanship is reduced to a minimum. A man on entering it should be able to cast off the political bias as effectually as the majority of judges cast it off when they ascend the Bench. Its membership should not be so large as to be unwieldy; its decisions should be arrived at by a sufficient number; and they should be of such a character as to secure consideration and respect.

To obtain these results a maximum of not more than three hundred should be fixed for the membership of the House of Lords, and the quorum for general debate for initiating legislation and for revision should be raised to one hundred. For the special purpose of rejecting a Bill sent up from the House of Commons the quorum should be raised to 150, and the rejection, to be carried, should be supported by a majority of two-thirds of those present and voting. In addition, after

a Commons' Bill is rejected, the Lords should be bound to draw up their reasons for the rejection, and to enter them in the Journals of the House. The publication of these reasons would set concisely before the public the question at issue between the two Houses, and would enable the popular judgment to be formed accurately and with rapidity. The House of Commons is so sensitive to a change of public opinion upon questions in which legislation is actually in progress that it would rarely return to the Upper Chamber a second time a Bill which the voice of the country had clearly condemned. The Upper Chamber should be allowed to reject a Bill for any given purpose twice, and not oftener; and only once if the rejection is followed by a dissolution. If it were returned to them a third time, their powers should be confined to amendment. The Upper House, having accepted the principle of a Bill and amended it, should not be competent to reject it afterwards on the ground that the Commons had disagreed with their amendments. On questions of detail, the will of the Commons should prevail. Further, an amendment for rejecting a Bill which has been passed by the Commons should not be allowed to take an explanatory or argumentative form, which is the method which has so frequently been adopted by the House of Lords to evade the real question at issue. It should be limited to the simple and well understood formula "that the Bill be read this day six months."

There can be no doubt that these limitations would do much to promote the smooth working of the legislative machine, and at the same time the reserve powers of the Upper Chamber would be sufficient to reassure

the most timorous believer in the possibility of rash legislation. It may be urged that the proposed scheme would prevent the House of Lords from forcing a dissolution, and so obtaining the opinion of the electorate upon a given question of policy. The answer is that the House of Lords does not possess that power in practice at present. Although the attempt has been made, the Peers have never succeeded by any vote, in compelling a dissolution contrary to the will of the majority of the House of Commons.

It may also be urged that the powers of rejection which it is proposed to confer exceed those which are in reality wielded by the House of Lords at present. It is true that the Lords rarely reject a Bill the second time ; but the history of the Jews' Disabilities Bill must not be forgotten. If the House of Lords had been powerless to reject that Bill on the third occasion, or after the first dissolution subsequent to its rejection, the scandalous history of the exclusion of Baron Nathan de Rothschild from the House of Commons would never have had to be written. If such a rule had generally prevailed the legislation actually achieved would have stood much as it stands at present ; a vast amount of useless agitation would have been avoided, and much time which has been wasted in the repassing of rejected measures would have been devoted to other pressing subjects. The actual powers possessed by a legislative body are not so important as the manner in which they are exercised. With a calm, dispassionate Upper Chamber, such as it would be essential to create, the magnitude of its authority would be a question of second-rate importance.

There are some advocates of reform who believe that the desired end could be achieved by allowing the House of Lords to remain as it is at present constituted, and depriving it merely of the power of rejecting Bills which have been accepted by the Commons. The proposal is so delightfully simple that one is tempted to wish that it would prove effectual. But in practice it would be useless. Even if the Lords were deprived of their power of rejection, their power to hinder legislation which is distasteful to them would remain practically unimpaired. An obnoxious Bill would be so mutilated by amendments as to ensure its rejection by the House of Commons. The frequent recurrence of the tactics which were adopted against the Irish Corporations Bill would be by no means an improvement of the legislative machine. No reform will be lasting or satisfactory which does not effect a change in the legislative temper of the second chamber—a change from the attitude of political prejudice to one of judicial impartiality. Such a reform can only be achieved by a complete change in the composition of the House of Lords.

One of the most useful functions of the second chamber, commonly called "the full dress debate," the discussion without official responsibility of large questions of current importance, would be retained untouched. Indeed, in a reformed House, containing representatives capable of dealing with those questions which, as Lord Salisbury confesses, are beyond the competence of the present House of Lords, such debates would gain greatly in value, and would become an unrivalled medium for the dissemination

of just and accurate information. But the worth of the House for this, and for other functions, would depend entirely upon the method of reconstruction which was adopted; and into this topic we must now proceed to inquire.

CHAPTER XIX.

THE METHOD OF RECONSTRUCTION.

BEFORE attempting to put forward any suggestion of reform for the purpose of converting the House of Lords into an Upper Chamber which will be competent to deal wisely and dispassionately with legislation, it is necessary to review the conditions under which such an attempt will have to be made. And first it must be noticed that such a reform will have to be effected by Act of Parliament, to which the assent of the Lords must be obtained. If the decision of the Peers in the Wensleydale case is to be accepted as binding, it is no longer possible to carry out the reform by an exercise of the Royal prerogative at the instance of the Ministers who enjoy the confidence of the elected representatives of the people.¹

This being so, the further question arises, How far is it reasonable to anticipate that the Peers will co-operate in any proposal for the reconstruction of their chamber? A review of their previous attempts to reform themselves

¹ The suggestion that the Crown should be advised to refuse to summon the Peers to Parliament is too gross a breach of modern constitutional practice to be worth considering; and besides, it would be effectual only if absolute abolition were in contemplation.

does not afford much hope of effectual aid from the House of Lords. The only occasion upon which the Lords have actually formulated and agreed upon a plan of reform was when they passed the Peerage Bill of 1719, and that scheme, as we have seen, would have resulted in the creation of a close oligarchical chamber—a step backward, not forward. Their decision in the Wensleydale case, their rejection of Lord Russell's Bill in 1869, the fate of Lord Rosebery's motions of 1884 and 1888, and more particularly their manipulation of Lord Salisbury's Bills of the latter year, prove that they are either unwilling to deal with the question or are incapable of doing so. It is evident, therefore, that reformers will make a grievous mistake if they put their trust in Peers, at any rate so long as the latter are not conscious of the pressure of public opinion. The appeal for reform must be addressed to the people; it can result only from their imperious and united demand. That is the form of reasoning which has never yet failed to impress the House of Lords with its argumentative conclusiveness.

But in order to obtain the practically united assent of the people of these kingdoms to any proposed constitutional change, certain conditions are necessary. The appeal has to be made, not to the extreme reformers, who, in their eagerness for change, care little for the form of it; nor to the extreme Tories, who believe that any change must needs be a change for the worse; but to that large class lying between these two extremes, which, notwithstanding a natural bias against constitutional reconstruction, are not fanatically opposed to it. What we have ventured to describe as the innate and

ineradicable conservatism of our people must be persuaded. To effect this it is essential that the proposed reform should link itself with the continuity of our constitutional history, not manifest itself as a palpable breach of it. Its ultimate purpose must be consummated by gradual steps, not by one crushing blow. If, therefore, it can be shown that any proposal is in harmony with various stages of constitutional development, and that its ultimate ends will be attained gradually, automatically, and without friction, it is probable that such a scheme will in its main features be a fairly accurate forecast of the plan which the nation would be most willing to adopt.

These considerations lead to a definite conclusion upon the negative side of the problem. Absolute abolition and absolute consequent reconstruction are out of the question. And, indeed, our one national experience of such an attempt does not offer any encouragement to repeat it. The causes of the failure of Cromwell's experiment upon the House of Lords have already been discussed. They were, a too rapid severance from past traditions, and a too exclusive retention of the power of nomination in the hands of the chief of the executive. Both these errors must therefore be avoided.

Assent to these propositions disposes of the suggestion that the second chamber should be purely elective, upon a franchise the same as, or more restricted than, that which returns members to the House of Commons. Such a change is impracticable, even if it were otherwise desirable, because it involves a too complete divorce between the old and the new. But it is liable to further objection. It would reduce the second chamber to the

condition of a merely local senate, whereas the aim of the reformer should be to give it expansion, and a more imperial character. It would also tend to produce the evil which is the curse of the United States Senate—the return of plutocrats, men who would be willing to finance their party in the various electoral districts ; and thus the influence of the second chamber over the House of Commons, which was abolished by the Reform Acts of 1832, would be to a large extent restored. Moreover, if the second chamber were returned by the same electoral body as the House of Commons, it would always be a question, in cases of collision, which of the two Houses actually represented the feeling of the nation. If it were chosen by a more restricted electorate it would provoke class differences, which above all things it is essential to avoid.

Let us gather up once more some of the scattered strands which history reveals in the development of the constitution of the House of Lords. We find it in the first place a body in which, by the numerical representation of the Church, members sitting for life were in a large majority ; and we also find that, even in the case of the temporal peerages, heredity was originally rather the consequence than the essence of the right of the Peers to legislate, being founded upon their services to the state. Further, we have noted a tendency, which nearly developed into a constitutional practice, to bring the creation of new Peers within the cognisance of Parliament ; to obtain the assent, if not the consent, of Parliament to such creations. This tendency towards the popularisation of the Upper Chamber was annihilated by civil commotion, followed by a long period of

almost irresponsible personal government. Later on, we see the sole reason for the hereditary peerages abolished and destroyed, but the hereditary remaining in spite of the removal of its cause. In the further development of our constitutional system the principle of delegation is introduced in order to give the Scotch and Irish Peers a representation in the Upper House of the Parliament of Great Britain, and of the United Kingdom. Then the unlimited growth of the Lords spiritual is checked by the provisions of Acts of Parliament, and finally the principle of life peerages is recognised in the creation of Lords of Appeal. If these constitutional precedents can be recognised and adopted in any proposal for the reform of the House of Lords, that proposal must necessarily appeal to the most conservative instincts of the British people, and its advocates can hardly incur the odium of being persons whom Mr. MacPherson, with some confusion of metaphor, stigmatises as "fetish-worshipping Iconoclasts."¹

It may be said at the outset that the object of the scheme which will now be propounded is to create ultimately a senate of life Peers, but to create it by such slow gradations that the change will be effected without constitutional strain or break. To produce this result, and if it be admitted that the present number of the Lords is too great for efficiency, and that a maximum of three hundred members is adequate for the proper performance of the work which a senate is called upon to transact, it is inevitable that the constitutional doctrine of delegation must in the first instance be applied to the

¹ "The Baronage and the Senate," p. 222.

hereditary peerage of the United Kingdom. This would have the incidental advantage of automatically excluding not only the "Black Sheep" aimed at by Lord Salisbury's second Bill of 1888, but also that large army of apathetic members who only respond to the crack of the party whip upon great emergencies. Lord Rosebery, when he advocated the application of delegation in 1888, proposed that the Irish and Scotch peerage should be merged with the British peerage for that purpose ;¹ but it seems fairer, in view of the proposals which will presently be made, and less likely to cause opposition, if these representations were preserved distinct. It is suggested, therefore, that the hereditary Peers having seats in the House of Lords should elect one hundred of their number, by a process of minority voting, to represent them for life in the Upper Chamber. The first election should be made in a manner similar to that provided in the Irish Act of Union for the election of representative Peers, with additional arrangements for securing the representation of minorities. With a view to the gradual elimination of the hereditary element in the House of Lords, it should be provided that only one new delegate should be chosen for every three vacancies which occur. By this means the hereditary Lords would gradually disappear from the second chamber in the character of representatives of the hereditary element, although many would doubtless obtain seats under the qualifications which will have to be substituted. The Scotch and Irish representations should be placed under similar provisions. They should be elected by a system

¹ Hansard, vol. cccxxiii. c. 1569.

of minority voting ; the Scotch Peers should be chosen for life ; and only one election in both cases should be made after the occurrence of two vacancies. This plan would give, in the first reformed House of Lords, a total of 144 representative Peers, or nearly a half of the whole body, but this number would be gradually and automatically reduced. The final extinction of the peerage as hereditary members of the House of Lords would take place in another generation, when the electing body would have adapted itself to its new conditions, and when all feeling of injury or resentment would have disappeared.

The subsidiary question now arises, What should be the status of the non-representative Peers ? Should these be reduced to the political impotence of their Scotch brethren, or should they be accorded the limited political rights which were conferred upon the Irish peerage ? The justice of the case is not met by either proposal. Lord Rosebery has said, no doubt with accuracy, that the hereditary principle "makes legislators of men who do not wish to be legislators, and Peers of men who do not wish to be Peers."¹ The remark suggests Lord Althorp's bitter cry—"Nature intended me to be a grazier, but men will insist on making me a statesman."² The fusion of the Lords with the general body politic should be encouraged but not compelled. Any Peer, including those of Scotland and Ireland, should be permitted, upon succeeding to his title or at any time thereafter, to sign a declaration, to be properly registered in Parliament, resigning his

¹ Hansard, vol. cccxxiii. c. 1557.

² Molesworth, "History of England," vol. iii. p. 301.

privileges as a Peer, after the analogy of the Clerical Disabilities Act of 1870.¹ In that case he would lose his right to be elected to the House of Lords and to vote for members of that House, but, on the other hand, he would be entitled to be registered as an elector for members of the House of Commons, or to stand for any constituency in any part of the United Kingdom. Such a resignation would of course not affect the right of his successor to assume the privileges of a Peer. Upon the final extinction of the hereditary representation of the House of Lords, every Peer would become entitled to all the rights and privileges of a Commoner.

A temporary basis for the new chamber having been thus effected, which would result in the inclusion of every member of the present House of Lords who possesses any political capacity, it now becomes necessary to consider how the remaining vacancies should be filled up, in accordance with a scheme which will be workable when the hereditary representation has expired by effluxion of time. Lord Rosebery suggested in 1888 that this might be effected by election by County Councils, the larger municipalities, and the House of Commons.² But this is liable to the objection which is fatal to all elective systems, namely, that it is too local in its operation, and to the further objection that it would result in too uniform a type of representative. Election by the House of Commons must also be rejected on the ground that it would import into the question that political animus which it is above all things desirable to exclude.

¹ 33, 34 Vict. c. 91.

² Hansard, vol. cccxxiii. c. 1570.

Some system of indirect selection, therefore, is the only method which remains available. It is remarkable that Mr. MacPherson, in the book to which such frequent attention has been called, has suggested a far more drastic reform in this direction than any one has yet ventured to put forward.¹ It is remarkable because the reader of the earlier part of the work, if he can assent to its arguments, must be forced to the conclusion that the House of Lords, as constituted at present, is an ideal second chamber. But when the writer comes to deal with the question of reform, those very virtues which have been so belauded become defects which stand in need of immediate correction. Mr. MacPherson has, like Stephano's monster, two voices. "His forward voice is to speak well of his friend, and his backward voice is to utter foul speeches and to detract." But his proposals for reform, although interesting, are incomplete. He does not provide for the ultimate extinction of the hereditary element, and his categories for promotion to life peerages are too numerous and complicated. The object of reform is to constitute a second chamber which will represent all the larger interests of the empire, not to create "a mere zoological collection of abstract celebrities."² No one can suppose, for instance, that the ex-mayors of colonial cities, excellent persons as they doubtless are, would add weight, from the Imperial point of view, to the deliberations of the reconstructed senate.

As imperialism is the keynote of the proposed reconstruction, the question of the representation of colonies

¹ "The Baronage and the Senate," p. 273 *et seq.*

² Lord Rosebery, Hansard, vol. cccxxiii. c. 1567.

and dependencies will be considered before the question of more local interests is dealt with. It would be well that each self-governing colony should be accorded three members, representing the law, the statesmanship, and the general interests of that colony. The acceptance of such a representation would not in any way pledge the colony to any fiscal or general policy; it would merely secure that colonial affairs received adequate discussion, and that the experience of those colonies should be brought to bear upon British problems. And in order to confer absolute freedom upon the colonies in the choice of their representatives, the precedent of the Irish Act of Union might be followed, and the local legislatures might be empowered to decide by what process their representatives should be selected. Colonies without representative Government would have to content themselves with such indirect representation as they would obtain under the category which will be presently proposed. Some form of representation for India, although more difficult to devise, is no less essential. The official aspect of Indian Government would be fully represented in another manner; but some plan for giving a hearing in an Imperial senate, at least to the larger feudatory States, ought not to be impossible. When a democratic constituency—all honour to it—has returned an eminent native of India to represent it in the House of Commons, there should be no backwardness on the part of this country in offering a permanent representation in the Upper Chamber to a few representatives of that vast dependency. Mr. MacPherson has told us that “no means so effectual to scare the colonies from Imperial Federation could be devised by

human ingenuity as the suggestion that they might be called upon to share their Imperial enfranchisement with East or West Indians, Africans, or Asiatics." ¹ It is to be hoped that in this he does not truly represent the opinions of colonial democracy, and that so one-sided and narrow a view does not prevail to any great extent in Australasia. But even if that hope is vain, the Imperial idea of the Upper Chamber must not be sacrificed. The advocates of reform are willing and anxious to satisfy the reasonable demands of the colonies, but not to humour their prejudices.

The remaining vacancies in the senate would have to be filled by the succession of members from categories which may be grouped under the two heads of "official" and "non-official." In the official categories the eligibility for seats in the Upper Chamber would be settled automatically by mere succession to the qualifying office; in the non-official categories it would have to be effected by a method which we will now proceed to describe.

Lord Rosebery, in 1888, suggested that the Privy Council might be utilised as the basis of a reformed Upper Chamber, but only to reject the suggestion as impracticable.² The Privy Council might, however, usefully form a recruiting-ground, or an antechamber to the House of Lords. The suggestion, therefore, is that persons who became eligible for seats in the Upper Chamber by virtue of their office, should be made immediately members of the Privy Council. With regard to the unofficial categories, the persons deemed eligible

¹ "The Baronage and the Senate," p. 315.

² Hansard, vol. cccxxiii. c. 1568.

under the various heads would have to be promoted to the Privy Council by the direct act of the Crown. In these cases it should be provided that the document of nomination should state the category under which the nominee was eventually to succeed to a seat in the House of Lords, and should lie upon the tables of both Houses for a given period before the appointment became absolute. In the interim it should be possible to annul the nomination upon a joint address of both Houses to the Crown. This process would be a modified revival of the system, extinguished in the anarchy consequent upon the Wars of the Roses, of creating Peers with the tacit assent of Parliament. It may be urged that the plan would give rise to unseemly wrangles over the qualifications of the persons selected. The possibility of such a scandal would only act as a check upon rashness of choice. There is nothing at the present time to prevent a wrangle over the selection of new Peers except common sense and self-restraint. Having thus settled a list of persons who would be heirs presumptive to seats in the House of Lords, it would only be necessary to define the number of representations which should be accorded in that House to each category, and then, upon a vacancy occurring, the senior member in the category to which the vacant seat belonged would be summoned to the Upper Chamber.

Before enumerating the categories of persons who should be raised to the Privy Council with a view to ultimate succession to a seat in the senate, it must be premised that this enumeration is by no means intended to be exhaustive. The object in view is, not to draw a Bill for the reform of the House of Lords, but

to furnish a rough sketch of the manner in which such a reform might be effected so as to constitute an Upper Chamber which would command the respect and the confidence of the empire. Nor is it necessary to specify the exact number from each category which should obtain seats in the House of Lords. That is a detail which may be reserved for future discussion, especially when it is remembered that, concurrently with the extinction of the hereditary representative element, those numbers will have to be proportionately increased. It must also be premised that, as the proposal is one which involves the eventual conversion of the Hereditary Chamber into a chamber of life Peers, many categories will have to be included which have been rejected as superfluous when Bills for the creation of a limited number of life Peers have been under criticism. First, then, as to the categories for the selection of official Peers.

I. *Politicians*. This should include all Cabinet Ministers, and also all members of any Government who have served at least a two years' term of office. This would bring into the list of possible members of the senate so many persons, representing such varied subjects and interests, that it might be necessary to subdivide the category and to institute an order of subrotation of succession.

With regard to categories II. to VII. inclusive, it is possible to accept without alteration the classification contained in Lord Salisbury's Bill of 1888.

II. *Law*. Judges of the superior courts in the United Kingdom. It will be remembered that the representation of colonial law has already been provided for.

III. *The Army.* Military officers of rank not lower than Major-General.

IV. *The Navy.* Naval officers of rank not lower than Rear-Admiral.

V. *Foreign relations.* Ambassadors and Ministers Plenipotentiary.

VI. *The Civil Service.* Heads of departments in the Civil Service (such departments to be specially enumerated). These should succeed to the Privy Council upon appointment, but should not be eligible for the Upper Chamber until after ten years' service and resignation of office.

VII. *Colonial Officials.* Viceroys and Lieutenant-Governors of India, and Governors of colonies who have served four years.

VIII. *The Church.* This interest is already represented by twenty-six life Peers. It would be impossible in a reformed House to admit so many members. The category would have to consist of the Archbishops and Bishops as heretofore, but the number of representatives actually sitting in the Upper Chamber would have to be greatly reduced.

In addition to the above categories two more must be added to complete the representation of official life, and to bring the reformed chamber nearer to Lord Salisbury's ideal.

IX. *Education.* This should include the Chancellors of Universities, and ex-Chairmen of the larger School Boards—say, London, Birmingham, Liverpool, Glasgow, Manchester, and Leeds. Of the two classes the last is the most essential. The Chairmen of such Boards, especially the first named, are at the head of administrations which,

in the amount of business they transact, and the complicated interests with which they deal, compare favourably with many a Government Department; and they are specialists in a subject which closely affects the welfare of the people, which occupies year by year more and more the consideration of the Legislature, and upon which the information of the present House of Lords, to judge by recent debates, is by no means exhaustive or accurate.

X. *Local Government.* The Chairmen of the six largest County Councils might in a similar manner be made Privy Councillors in order that they might ultimately represent the vast social interests which are placed under the control of such councils. A similar privilege might be extended to the mayors of some of the larger municipalities, provided they had held office for three years.

It will be only necessary shortly to summarise the categories of non-official persons whom it would be advisable to gradually introduce into the House of Lords in order to perfect the representation of all interests and all subjects. The earlier of these categories deal with those questions which, according to Lord Salisbury's confession, are not at present efficiently debated in the House of Lords.

Commercial questions are so varied and so complicated that it is necessary to allot them five distinct categories, namely, the following :—

- I. *Finance.*
- II. *Trade.*
- III. *Shipping.*
- IV. *Railways and Canals.*

V. *Engineering.*

And as to the other departments of thought and activity, the following categories are suggested :—

VI. *Medicine*, with special relation to Sanitation and Hygiene.

VII. *Science*—from the practical side.

VIII. *Land*, from the point of view of—

(1) The landlord.

(2) The tenant.

It might be necessary to suspend the operation of the first part of this category until the numbers of the representative Peers had been reduced to one-tenth. After that time the landed interest should be accorded its share of representation.

IX. *Labour*. Agricultural and Urban. This is in accordance with Lord Rosebery's suggestion in 1888. It is a subject which excites so much prejudice, nay, even ridicule, in certain quarters, that it is difficult to obtain a serious hearing for it. But if the ideal be to create a second chamber which will fairly represent all classes and all interests, it would surely be a great absurdity to exclude the representatives of those who constitute the vast majority of the nation. And if comparisons were arguments, it would be quite easy to select leaders of the labour movement who would compare favourably in intelligence and ability with the present average hereditary legislator.

X. *Philanthropic effort.*

It need only be added that no Privy Councillor eligible for a seat in the senate would be compelled to accept it. If he declined, the offer would be made to the councillor next in order of rotation in the category.

It would also be competent for any member of the senate to resign his seat.

In the foregoing categories two classes of persons have not been included whose claims for representation have been put forward in nearly every scheme for the reform of the House of Lords—namely, “Dissenters” and “literary men and artists.” Dissenters have been excluded not from any want of sympathy with their attitude towards either religious or political questions, but for reasons which appear cogent and conclusive. In the first place, Dissenters are not a homogeneous body; they are split up into manifold sects and divisions. It would be impossible to confer separate representation on each of these sects, and to select some to the exclusion of others would be invidious. A combination of representation would be impossible. The Presbyterians would not recognise the representative character of General Booth, nor would the Baptists feel any consolation in the fact that they had Cardinal Vaughan for their spokesman. If any exception were to be allowed in this respect, one would be tempted to make it in favour of the Cardinal Archbishop of Westminster. The Catholics still labour under a few civil disabilities, and, considering the peculiar position of Ireland and parts of Canada in this respect, it might exercise a beneficial influence if the Catholic Primate were offered a seat in the national senate. But it is to be feared that, in spite of the breaking-down of religious intolerance which has been so manifest of late years, the nation is hardly ripe for so graceful an act of recognition. There are yet too many people who would condemn it—as the Catholic Emancipation Act was condemned—as a sin against the Almighty.

Again, Dissenters possess no such direct interest in legislation as the Established Church of England possesses. So long as the question of Disestablishment remains unsettled, and it is possible for Parliament to pass Church Regulation Acts, it would be unjust to exclude the authoritative exponents of the views of the Church from the national Legislature. Dissenting ministers are capable of election to the House of Commons, while clerks in holy orders are most unjustly excluded.

Further, if we read aright the signs of the times, the tendency of Dissenting bodies is more and more to coalesce with the forces of the Church. There is an uneasy feeling abroad that sooner or later the various denominations will have to sink their minor differences and unite in defence of their common principles. It may well be that, before any scheme of reform of the House of Lords can take full effect, the broader lines of separation between Church and Dissent will have vanished, and that the mouthpiece of the Establishment will be recognised as speaking the wishes of the majority of the sects. In such circumstances the question of granting distinct representation to Dissenters may well be postponed for the present.

The proposal to accord representation to literature and art seems to be based upon the confusion of thought which has been adverted to in an earlier section of this inquiry. A seat in the reformed senate is not to be conferred as an honour, but on account of a qualification which makes the senator an efficient exponent of some large question of national importance. And the proposed categories are so broad that it is quite possible

for a literary man, at any rate, to bring himself within one or more of them. Let us confer honours, by all means, upon our distinguished writers and painters. It is a pity that they do not receive them quite as profusely as the givers of civic banquets. There would be no reason, under the new system, why they should not receive peerages if they desire them. But for representation in the second chamber they must take their chance of qualifying under one or other of the recognised categories.

With this apology and justification this investigation must close. It is perhaps unnecessary to point out that it deals only with a fragment of the great question of constitutional reform. It has been treated, however, with a view to the larger problem which is being forced upon the nation. Nothing is more certain than that the Imperial Parliament is rapidly becoming more and more incapable of transacting the business which, under present arrangements, is of necessity brought before it. The growing stringency of the rules of Parliamentary procedure is due, not so much to any general diminution of self-restraint or dignity, but to the impossibility, in present circumstances, owing to the crush of business, of allowing that fulness, or even lavishness, of debate which in earlier times was not incompatible with the transaction of it. No doubt this state of things has been taken advantage of by individuals on both sides of the House of Commons for the purpose of obstruction. But it is far better, under free Parliamentary Government, that every man should speak out freely the folly or the wisdom which may chance to be within him rather than that he should be able to declare that the

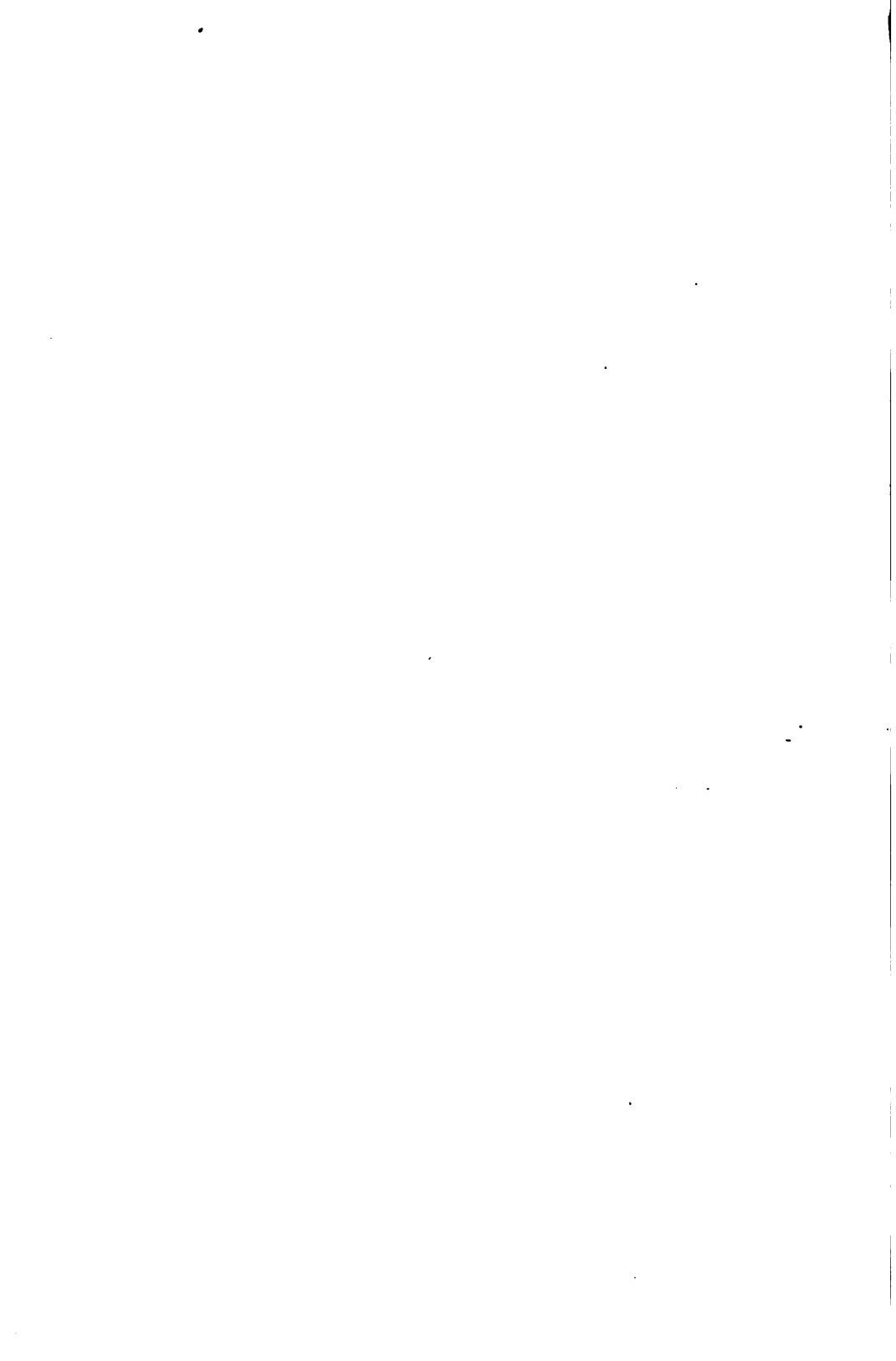
stream of his sage counsel has been arbitrarily stopped. The closure, however necessary it may be in the present congested state of public business, is, in its ultimate action, a measure for the glorification of the fool. His enforced silence raises a presumption of wisdom which would be speedily annihilated by his speech.

The work discharged by Parliament at the commencement of this century as compared with its present duties is as the work of a suburban vestry to that of the London County Council. Government by local devolution is inevitable; but, in pursuance of our time-honoured custom, we are effecting the change in sections—dealing first with the cases in which the need is most pressing. And, with our chartered English logic, we shall also proceed to lay the disadvantages which are inseparable from fragmentary treatment at the door of the advocates of the change as if they were the authors of a national crime. Until England, Scotland, and Ireland are each endowed with a local administration the retention of their representatives in the logically indefensible Local-Imperial Parliament can be refused only by avowed Separatists. The inconvenience of the system is due only to our beloved method of legislating by sections. The true Unionist and Federalist looks forward to the time when these reforms will be completed, and a genuine Imperial Parliament will exist.

But the reform of the House of Lords in the direction of Federalism is not so complicated, because it does not depend upon any question of devolution. It is to this end, and in order to deal with another "section" of the great and inevitable reform, that these pages have been written. It would be idle to pretend that the writer is

not fervently attached to the principles of one political party in the state. This attachment is due to the belief that that party has the courage to confide in what Castelar has called the "innate political capacity of the English nation," that it has faith in "the bettering of the times," and that for those reasons it is the best adapted to guide the people on the path of progress towards ultimate regeneration. And that belief is based upon a larger faith and trust which rises superior to party and to creed—a faith and trust in that race which has ever held aloft the banner of freedom through storm and stress in these beloved islands, and which has spread like an irresistible flood over so large a portion of the habitable globe, carrying with it its glorious traditions and its still more glorious aspirations. Not soon, not even in the lifetime of those who strive after them, will those aspirations be realised. The torch of Progress will be passed on from many a tired hand to the firmer grasp of a younger generation before the goal can be reached. But if by word or deed one unheeded follower in the great onward march may contribute to the removal of an obstacle which might otherwise have hindered the realisation of the nation's desire, the hand may sink to rest; and the eyes may close in peace, soothed with visions of the glory that shall be hereafter.

APPENDIX



APPENDIX.

I.

[A Table of the principal rejections and mutilations of Bills by the House of Lords since 1832, classified according to subjects.]

I. IRELAND.

I. LAND.

1845. *Tenants' Improvements Compensation Bill* (L.). (Based on the Report of the Devon Commission.) Object: "A legal security to the out-going tenant that under certain circumstances he shall be entitled to compensation for the effects of his own industry and the expenditure of his capital in improving the value of land if he should be ejected before he has had time to reap their fruits" (Hansard, vol. lxxxi. c. 221). Dropped on account of Lords' opposition (Ibid. vol. lxxxii. c. 493).
1853. *Tenants' Improvements Compensation Bill*. Similar objects. Passed Commons (Hansard, vol. cxxix. c. 635). Dropped in Lords (Ibid. c. 1500).
1854. *Tenants' Improvements Compensation Bills* (2) (L.). Select Committee of Lords reported—"That it is not expedient to proceed with the Bill," in each case (Index to Lords' Journals, pt. ii. pp. 500, 502). A

similar fate in both 1853 and 1854 befel the "Law of Landlord and Tenant (Ireland) Compensation Bill," and "The Leasing Powers (Ireland) Bill."

- 1870. *Land Act*. The Lords in the first instance carried amendments which struck at the root of the Bill, but after long negotiation they contented themselves with depriving a tenant who assigned without consent of landlord, or who sub-let to labourers, of any claim to compensation; refusing a proposed mitigation of the law of distress; and denying compensation to tenants ejected for non-payment of rent (Hansard, vol. ccii. c. 745-1695; vol. cciii. c. 118-498).
- 1880. *Compensation for Disturbance Bill*. Passed by Commons; rejected by Lords (Hansard, vol. cclv. c. 110). (The rejection of this Bill resulted in the extension of the Land League movement, and the fierce agrarian convulsion of the following years.)
- 1881. *Irish Land Act*. The Lords, as in 1870, carried amendments which struck at the root of the Bill. Ultimately, by compromise, the Lords secured—(1) The limitation of the provisions of the Act as regarded English-managed estates; (2) the destruction of the provision to exonerate the tenant against being charged rent upon his improvements in his holding; (3) the rejection of the power to stay proceedings against tenants in arrear pending application for judicial rent (Hansard, vol. cclxiv. c. 236, &c.).

2. IRISH PARLIAMENTARY REFORM.

- 1835. *Registration Bill*. Object: "To assimilate, as far as possible, the Irish to the English system" (Hansard, vol. xxx. Third Series, c. 1250). Passed Commons; rejected by Lords (Ibid. c. 1263).
- 1837. *Reform of Parliament Bill*. Object: "To enable the returning officers in large towns in Ireland to increase the number of polling places" (Hansard, vol. xxxviii. Third Series, c. 1850). Passed Commons; rejected by Lords (Ibid. c. 1853).

1850. *Elections Bill*. Object : To reduce franchise qualification to £8. Lords raised it to £15. Compromised at £12 (Hansard, vol. cxii. c. 1142, 1423, 1442).

3. IRISH MUNICIPAL REFORM (see *ante*, pp. 186, 202).

1836. *Corporations Reform Bill*. Passed Commons ; mutilated by Lords and dropped.

1837. Ditto. Postponed.

1838. Ditto. Mutilated and dropped.

1839. Ditto. Ditto.

1840. Ditto. Passed in mutilated form.

4. IRISH CHURCH.

1833. *Irish Church Regulation Act*. Passed by Commons ; mutilated by Lords (see *ante*, p. 200).

1835. *Tithe Bill*. Mutilated by rejection of appropriation clauses and dropped (see *ante*, p. 187).

1836. *Tithe Bill*. The same results.

1868. *Established Church (Ireland) Suspensory Bill*. Object : To prevent for a limited time the creation of new vested interests in the Irish Church, pending the discussion of the question of Disestablishment. Passed by Commons ; rejected by Lords (Hansard, vol. cxci. c. 298).

II. RELIGIOUS EQUALITY.

I. CATHOLICS.

1835. *Catholic Marriages (Ireland) Bill*. Rejected (see *ante*, p. 208).

1865. *Roman Catholic Relief Bill*. Object : To remove a portion of the oath tendered to Catholics before sitting in Parliament, which, it was alleged, could not be conscientiously taken by them (Hansard, vol. clxxx. c. 766). Passed by Commons ; rejected by Lords (Ibid. c. 822).

2. JEWS.

1833. *Jews' Disabilities Relief Bill*. Passed by Commons ;
rejected by Lords.
- | | | |
|-------|--------|--------|
| 1834. | Ditto. | Ditto. |
| 1836. | Ditto. | Ditto. |
| 1841. | Ditto. | Ditto. |
| 1848. | Ditto. | Ditto. |
| 1857. | Ditto. | Ditto. |
1858. *Oaths Bill*. Amended by Lords to exclude Jews.
Lords subsequently passed an Act enabling Jews to
sit in Parliament (see *ante*, p. 214).

3. DISSENTERS.

1834. *Religious Assemblies Bill*. Object : To allow "any persons to hold religious meetings, consisting of more than twenty persons, at their houses," and to authorise "any person to teach or preach at such meetings without taking any oath" (Hansard, vol. xxv. Third Series, c. 28). Rejected (Ibid. c. 31).
- Poor Laws Amendment Bill*. Lords struck out clause giving Dissenting ministers a right to visit workhouses (Hansard, vol. xxv. c. 455, 474, 713).
1858. *Church Rates Abolition Bill*. Passed Commons ; rejected by Lords (Hansard, vol. cli. c. 855).
1860. *Church Rates Abolition Bill*. Passed Commons ; rejected by Lords (Hansard, vol. clix. c. 664).
1867. *Church Rates Abolition Bill*. Passed Commons ; rejected by Lords (Hansard, vol. clxxxix. c. 1093).
- Tests Abolition (Oxford and Cambridge) Bill*. Object : "To enable persons to share in the government of the Universities of Oxford and Cambridge without any test as to their religious persuasion" (Hansard, vol. clxxxix. c. 43). Passed Commons ; rejected by Lords (Ibid. c. 75).
1869. *University Tests Bill*. Object : "To remove the impediments that now stand in the way of those who cannot sign the Thirty-Nine Articles, and which

prevent their receiving the full privileges of the Universities" (Hansard, vol. clxcviii. c. 125). Passed by Commons; rejected by Lords (Ibid. c. 143).

1870. *University Tests Bill*. Passed Commons. Dropped on account of an evasive amendment passed by the House of Lords (Hansard, vol. cciii. c. 212).

III. PARLIAMENTARY REFORM.

1834. *Bribery Bill*. Passed Commons; rejected by Lords (see *ante*, p. 176).
1848. *Corrupt Practices at Elections Bill*. Object: To provide "a machinery by which an investigation might take place into . . . corrupt practices at the election of Members of the House of Commons" (Hansard, vol. ci. c. 480). Passed Commons; rejected by Lords by evasive (want of time) amendment (Ibid. c. 485).
1871. *Ballot Bill*. Passed Commons; rejected by Lords (see *ante*, p. 174).
1872. *Ballot Act*. Passed Commons; mutilated by Lords.
1884. *Franchise Bill*. Passed Commons; rejected by Lords (see *ante*, p. 194).

IV. MISCELLANEOUS.

1835. *Counsel for Prisoners Bill*. Passed by Commons; dropped by Lords (*ante*, p. 207).
1836. *Counsel for Prisoners Bill*. Same result.
1838. *Access of Mother to Children Bill*. Passed by Commons; rejected by Lord (see *ante*, p. 210).
1860. *Paper Duties Bill* (see *ante*, p. 228).
1871. *Army Purchase Bill*. Passed by Commons; evasively defeated by Lords (see *ante*, p. 191).
1873. *Rating (Liability and Value) Bill*. Passed by Commons; rejected by Lords.
1893. *Home Rule Bill*. Passed by Commons; rejected by Lords.

1893. *London Improvements Bill*. Passed by Commons ; mutilated by Lords (see *ante*, p. 184).
Law of Succession to Real Property (Amendment) Bill (L.). Rejected.

N.B.—A capital L in brackets after the title of a Bill indicates that it was first brought forward by the Government in the House of Lords.

II.

[A Chronological Table of the principal rejections and mutilations by the House of Lords since 1832. The italics indicate that a Conservative Government was in office when the rejection or mutilation took place. A capital D after the date of the year indicates a dissolution, and the following figure the month in which it occurred.]

- | | |
|-----------------------|--|
| 1833. Grey. | Irish Church Regulation Act mutilated. |
| Liberal. | Jews' Disabilities Bill rejected. |
| 1834 D 12. Melbourne. | Jews' Disabilities Bill rejected. |
| Liberal. | Poor Law Act mutilated. |
| | Bribery Prevention Bill mutilated and dropped. |
| | Religious Assemblies Bill rejected. |
| 1835. | Registration (Ireland) Bill rejected. |
| | Catholic Marriages (Ireland) Bill rejected. |
| | Irish Tithe Bill mutilated and dropped. |
| | Counsel for Prisoners Bill dropped. |

1836. Irish Corporations Bill mutilated and dropped.
Irish Tithe Bill mutilated and dropped.
Jews' Disabilities Bill rejected.
Counsel for Prisoners Bill dropped.
- 1837 D 7. Reform of Parliament (Ireland) Bill rejected.
Irish Corporations Bill defeated by postponement.
1838. Irish Corporations Bill mutilated and dropped.
Access of Mother to Children Bill rejected.
1839. Irish Corporations Bill mutilated and dropped.
1840.
1841 D 6. Jews' Disabilities Bill rejected.
1842. *Peel.*
Conservative.
1843.
1844.
1845. *Tenants' Improvements (Ireland) Compensation Bill dropped.*
1846. Russell.
Liberal.
- 1847 D 7.
1848. Corrupt Practices at Elections Bill rejected.
Jews' Disabilities Bill rejected.
1849.
1850. Irish Franchise Bill mutilated.
1851.
1852 D 7. *Derby.*
Conservative.
1853. Aberdeen.
Liberal. Jews' Disabilities Bill rejected.
Tenants' Improvements (Ire-

- land) Compensation Bill rejected.
 Landlord and Tenant (Ireland) Compensation Bill rejected.
 Leasing Powers (Ireland) Bill rejected.
1854. Tenants' Improvements (Ireland) Compensation Bill rejected.
 Landlord and Tenant (Ireland) Compensation Bill rejected.
 Leasing Powers (Ireland) Bill rejected.
1855. Palmerston.
 Whig.
1856.
 1857 D 3.
 1858. † Derby.
 Conservative.
- Oaths' Bill mutilated (to exclude Jews).*
Church Rates Abolition Bill rejected.
Deceased Wife's Sister Bill rejected.
- 1859 D 4.
 1860. * Palmerston.
 Whig.
- 1861.*
 1862.*
 1863.*
 1864.*
 1865 D 7. Russell.
 Liberal.
- Church Rates Abolition Bill rejected.
 Paper Duties Bill rejected.
 Bankruptcy Act mutilated.
- Roman Catholic Relief Bill rejected.
1866.
 1867 † Derby.
 Conservative.
- Church Rates Abolition Bill rejected.*
Tests Abolition (Oxford and Cambridge) Bill rejected.

1868 D 11. †	<i>Disraeli.</i>	<i>Established Church (Ireland)</i>
	<i>Conservative.</i>	<i>Suspensory Bill rejected.</i>
1869.	Gladstone.	University Tests Bill rejected.
	Liberal.	Life Peerage Bill rejected.
1870.		University Tests Bill rejected.
1871.		Ballot Bill rejected.
		Army Purchase Bill defeated.
		Deceased Wife's Sister Bill rejected.
1872.		Ballot Act mutilated.
1873.		Rating (Liability and Value) Bill rejected.
		Deceased Wife's Sister Bill rejected.
1874 D 1.	<i>Disraeli.</i>	
	<i>Conservative.</i>	
1875.		
1876.		
1877.		
1878.		
1879.		<i>Deceased Wife's Sister Bill rejected.</i>
1880 D 3.	Gladstone.	Compensation for Disturbance (Ireland) Bill rejected.
	Liberal.	Deceased Wife's Sister Bill rejected.
1881.		Land Act (Ireland) mutilated.
1882.		Arrears Act (Ireland) mutilated.
		Deceased Wife's Sister Bill rejected.
1883.		Agricultural Holdings Act mutilated.
		Deceased Wife's Sister Bill rejected (third reading).
1884.		Franchise Bill rejected.
		Deceased Wife's Sister Bill dropped.
1885 D 11.		Deceased Wife's Sister Bill rejected.

- 1886 D 6. Deceased Wife's Sister Bill
rejected.
1887. *Salisbury.*
Conservative.
- 1888.
1889. *Deceased Wife's Sister Bill*
rejected.
- 1890.
- 1891.
- 1892 D 8.
1893. Gladstone. Home Rule Bill rejected.
Liberal. London Improvements Bill
mutilated.
Succession to Real Property
Amendment Bill rejected.

* The Government of this period cannot properly be classed "Liberal." The measures which aroused the antipathy of the House of Lords were defeated in the House of Commons.

† During these periods the Conservatives, although in office, were in a minority in the House of Commons.

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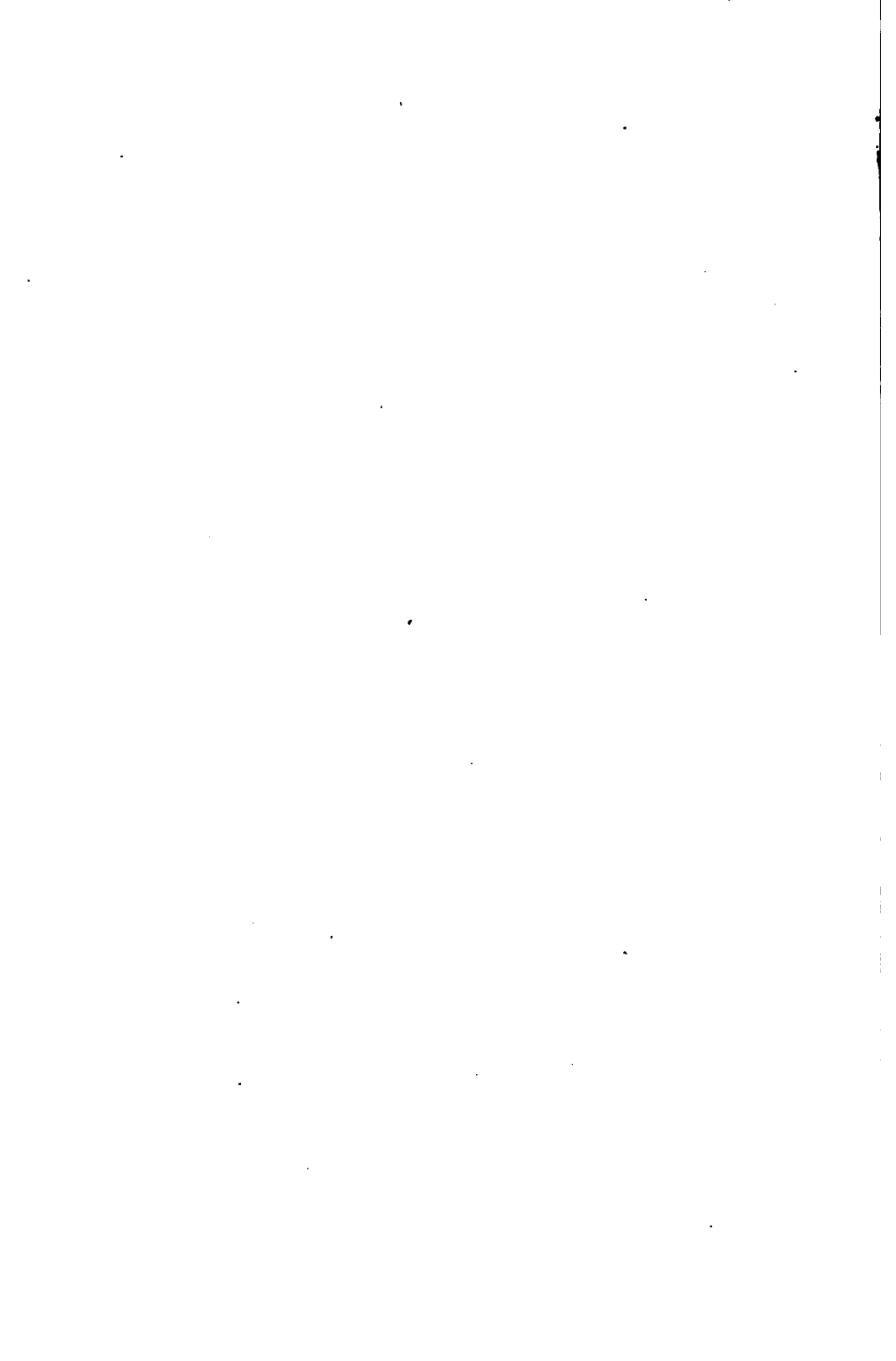
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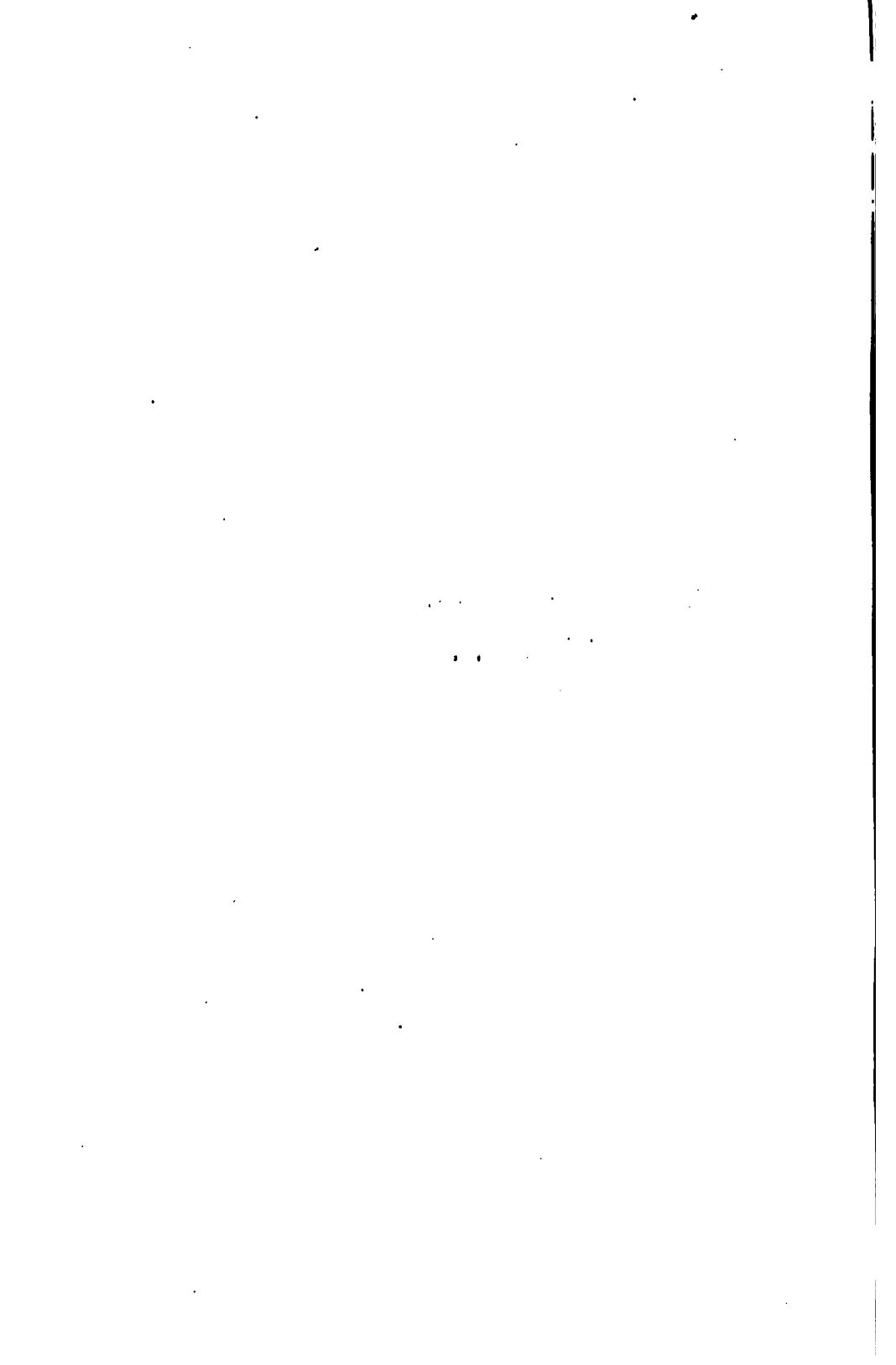
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